



Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

CIVIL SOCIETY REPORT

on the Implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN THE GAMBIA

by Public-Private Integrity

Acknowledgements

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The findings in this report are those of the authors but do not necessarily reflect the views of the UNCAC Coalition and the donors who have made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of 22 May 2022.

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Public-Private Integrity is a progressive civil society organization focused on anti-corruption efforts. We gather information, share knowledge and learn about the implementation and application of anti-corruption mechanisms to improve national policies and uphold international anti-corruption standards.

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Abbreviations

AC	Anticorruption Commission
AGC/MoJ	Attorney General Chambers and Ministry of Justice
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
AMRC	Assets Management and Recovery Corporation
ATM	Automatic Teller Machine
AUCPCC	African Union Convention on Prevention and Combatting Corruption
CBG	Central Bank of The Gambia
CCCSG	The Code of Conduct for the Civil Service of The Gambia
CCP	Criminal Code Procedure
CDD	Customer Due Diligence
CSOs	Civil Society Organizations
CSRPU	Civil Service Reform and Planning Unit
DNFBP	Designated Non-Financial Business and Professions
DPP	Director of Public Prosecution
DVP	Delivery vs Payment
EAGL	Euro Africa Group Limited
FATF	Financial Action Task Force
FI	Financial Institutions
FIS	Financial Information System
FSD	Financial Supervision Department
FX	Forex Bureau
GBMA	Government Budget Management and Accountability Act
GFIU	Gambia Financial Intelligence Unit
GIABA	Inter-Governmental Group against Money Laundering
GO	The General Orders for the Public Service of The Gambia
GPF	Gambia Police Force
GPPA	Gambia Public Procurement Authority
GPFR	Gambian Public Procurement Regulations
HCS	Head of Civil Service
HFO	Heavy Fuel Oil
ICPO-INTERPOL	International Police Criminal Organization
IEC	Independent Electoral Commission
IFRS	International Financial Reporting Standards
IGP	Inspector General of Police
JC	Janneh Commission
JCA	Judicial Convention Agreement with Senegal 1973
JS	Judicial Services
LEA	Law Enforcement Agencies
ML	Money Laundering
MLA	Money Laundering Act
MOCI	Ministry of Information and Communication Infrastructure
MoFEA	Ministry of Finance and Economic Affairs
MVTS	Money or Value Transfer Services
NAO	Supreme National Audit Office
NASC	National Assembly Select Committee
NAWEC	National Water and Electricity Corporation
NCB	Non-Conviction Based Confiscation
NDP	National Development Plan
NFIs	Non-Financial Institutions
NPO	Non-Profit Organization
NTA	National Training Authority Act 2002

OIC	Organization of Islamic Cooperation
PCSE	Parliamentary Committee on State Enterprises
PEPs	Politically Exposed Persons
PMO	Personnel Management Office
PS	Permanent Secretary
PSA	Public Service Act 1991
PSC	Public Service Commission
RE	Reporting Entities
RTGS	Real Time Gross Settlement
SOE	State Owned Enterprise
SOS	Supervision Authority
SPU	Specialized Procurement Unit
SSHFC	Social Security and Housing Finance Corporation
SSS	Security Settlement System
STR	Suspicious Transaction Reporting
TF	Terrorist Financing
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime

List of Persons Consulted

First Name	Surname	Affiliation	Date of Interview
Samba	Bajie	Deputy Ombudsman, Office of the Ombudsman	25 June 2021
Lamin	Samateh	Chairman, Public Service Commission, Office of the President	14 July 2021
Joseph	Colley	Vice Chairperson, Independent Electoral Commission	27 June 2021
Amie	Njie Joof	Permanent Secretary, Ministry of Information and Communication Infrastructure	12 July 2021
Musa	Cham	Permanent Secretary, Personnel Management Office, Office of the President	14 July 2021
Momodou Lamin	Bah	Accountant General, Ministry of Finance & Economic Affairs	30 June 2021
Miamuna	Jeng	The PRO, National Audit Office	30 June 2021
Abdoulie	Sanneh	Commissioner Prosecution and legal unit, Gambia Police Force	30 June 2021
Ibrimah	Sanyang	Director Policy and Operation, GPPA	14 July 2021
Alhajie	Daboe	Director, Gambia Financial Intelligence Unit	30 June 2021
Bai Nai	Ceesay	The Director of Budget, Ministry of Economic Affairs	30 June 2021
Sherif	Jallow	Director Civil Service Reform and Planning Unit	14 June 2021
Ansumana	Sanneh	Managing Director, Assets Management and Recovery Corporation	27 June 2021
Touray	Noah	Head of the Civil Service	16 July 2021
Jobarteh	Maddi	CSO activist/TANGO	20 July 2021

I. Introduction

The Gambia signed the United Nations Convention against Corruption (UNCAC) on 8 July 2015 and the country has yet to ratify it.

This report reviews The Gambia's implementation of articles of Chapter II (Preventive measures) and Chapter V (Asset recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters. The Gambia was selected by the UNCAC Implementation Review Group by a drawing of lots for review in the fifth year of the second cycle. A draft of this parallel report was provided to the government of The Gambia.

Scope. The UNCAC articles and topics that receive particular attention in this report are those covering, under Chapter II:

- preventive anti-corruption policies and practices (Article 5),
- preventive anti-corruption body or bodies (Article 6),
- public sector employment (Article 7.1),
- codes of conduct, conflicts of interest and the private sector (Articles 7, 8 and 12),
- reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2),
- political financing (Article 7.3),
- public procurement (Article 9.1),
- the management of public finances (Article 9),
- measures relating to the judiciary and prosecution services (Article 11),
- private sector transparency (Article 12),
- access to information and the participation of society (Articles 10 and 13.1), and
- measures to prevent money laundering (Art. 14).

Under Chapter V, the UNCAC articles and topics that receive particular attention in this report are those covering:

- prevention and detection of transfers of proceeds of crime and financial intelligence unit (Articles 52 and 58),
- measures for direct recovery of property and special cooperation (Articles 53 and 56),
- mechanisms for recovery of property through international cooperation in confiscation (Article 54),
- international cooperation for purposes of confiscation, special cooperation and bilateral and multilateral agreements and arrangements (Articles 55, 56 and 59), and
- the return and disposal of assets (Article 57).

Structure. The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in The Gambia as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

Methodology. The report was prepared by Public-Private Integrity, with technical and financial support from the UNCAC Coalition. The group made efforts to obtain information for the report from government offices and to engage in dialogue with government officials.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.

II. Executive Summary

The Gambia has recently enacted new legislation to strengthen national anti-corruption measures to comply with UNCAC Chapter II (Preventive Measures) and Chapter V (Asset Recovery). This civil society parallel report reviews the law and practice of implementing the provisions of Chapters II and V of the Convention in The Gambia.

The Gambia is a dual-tier state and party to UNCAC, the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), the Financial Action Task Force (FATF), and the African Union Convention on Preventing and Combating Corruption (AUCPCC). The Gambia has yet to agree to the ECOWAS Protocol on Corruption.

Despite commendable performances by the Gambian government in fighting corruption, there are several notable factors that cause it, which has contributed to the Gambian government backing down from its obligations to set up an anti-corruption and access to information commission.¹

Another important finding from this report is that the numerous peripheral government agencies attached to the offices of President and Vice President have contributed to officials' inability to effectively oversee their functions and duties within the public service and promote concepts of equality before the law and non-discrimination. The national audit reports on public offices over the years do not indicate that the Gambian government has taken the necessary measures to implement the Supreme National Audit Offices' (NAO) recommendations.

Another main finding of growing concern is government licensing and the delivery of public services in The Gambia. The process and procedures related to civil service reform, government procurement, submission of receipts, periodic review of the civil service manual, participation of society, seizure and alienation of property and beneficial ownership can be considered as a basic networked system of non-standard anti-corruption measures to maintain the momentum in fighting corruption in The Gambia.

Description of Process

Public-Private Integrity (PPI) received a warm welcome from all officials during the preparation of the parallel CSO report. We were able to get interviews and arrange meetings with some of the government agencies. We have obtained additional information from the official websites of the relevant government agencies and other

¹ National Assembly Business Bill Tracker, Gambia Anti Corruption Bill 2019 and Gambia Access to Information Act 2021, available at: https://www.assembly.gm/?page_id=709, accessed 22 May 2022.

available government literature. We would like to thank all officials for facilitating interviews and open discussions about the risk of corruption and the level of implementation of anti-corruption measures in the public sector.

We are particularly grateful to representatives at the Office of the Head of Civil Service, Office of the Ombudsman, Public Service Commission, Gambia Police, Ministry of Finance and Economy Affairs, Central Bank of Gambia, Gambia Financial Intelligence Unit, National Audit Office, Ministry of Communications Infrastructure and Information Technology, Director of Asset Management and Recovery Corporation, Staff at Attorney General Chambers and Ministry of Justice, and the Gambia Public Procurement Authority.

Availability of Information

During the preparation of this civil society parallel report, certain requests for information to government agencies were answered positively, in some cases negatively, or not at all. The main obstacles to obtaining the necessary information were public officials' reluctance to share data with civil society, due to an overwhelming level of internal control. This is contrary to the provisions of the Access to Information Act 2021 and may affect civil society's confidence in the management of public affairs. Several officials cited non-disclosure clauses in the legal and political framework enshrined in The Gambia's Constitution and other laws,² including the Code of Conduct for Officials,³ and the Oath of Secrecy enshrined in law.

In summary, relevant statistical information is not fully accessible, partly because it has not been compiled by the government. Some information is available but only for Gambian authorities and officials. Significant improvements have been made in the reporting of audited financial statements and the performance of government agencies.⁴

Implementation in Law and in Practice

Table 1: Implementation and enforcement summary

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
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² In addition to the 1997 Constitution the Personnel Management Office, Rule Books; Section 02115 of the Code of Conduct provides that the appointing authority ensures that all officials it appoints sign a non-disclosure agreement – available at <https://www.pmo.gov.gm/rule-books>, accessed 6 May 2022.

³ Personnel Management Office, Rule Books, available at: <https://www.pmo.gov.gm/rule-books>, accessed 6 May 2022.

⁴ National Audit Office, Public Service Performance Audit Report 2022; available at: <https://nao.gm/#>, accessed 6 May 2022.

Art. 5 – Preventive anti-corruption policies and practices	Largely implemented	Poor
Art. 6 – Preventive anti-corruption body or bodies	Not implemented	Poor
Art. 7.1 – Public sector employment	Largely implemented	Moderate
Art. 7.3 – Political financing	Not implemented	Poor
Art. 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations	Fully implemented	Good
Art. 8.4 and 13.2 – Reporting mechanism and whistleblower protection	Not implemented	Poor
Art. 9.1 – Public procurement	Largely implemented	Good
Art. 9.2 – Management of public finances	Fully implemented	Good
Art. 10 and 13.1 – Access to information and the participation of society	Partially implemented	Poor
Art. 11 – Judiciary and prosecution services	Fully implemented	Good
Art. 12 – Private sector transparency	Partially implemented	Poor
Art. 14 – Measures to prevent money-laundering	Fully implemented	Good
Art. 52 and 58 – Anti-money laundering	Fully implemented	Good
Art. 53 and 56 – Measures for direct recovery of property	Not implemented	Poor
Art. 54 – Confiscation tools	Not implemented	Poor
Art. 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation	Not implemented	Poor
Art. 57 – The return and disposal of confiscated property	Not implemented	Poor

Several features of the legal framework in The Gambia, such as the Constitution, the Criminal Code and the Economic Crimes Act, among others, provide sets of rules and regulations that serve as a guide on how to promote integrity, honesty and responsibility in public offices. In principle, these policies reflect the rule of law, proper management of public affairs and property, integrity, transparency and accountability,

yet their application is flawed. The Gambia faces obstacles such as a lack of inter-departmental, inter-ministerial information sharing and poor cooperation further weakened by an ineffective ICT system. Moreover, internal anticorruption monitoring and application measures are not enforced, non-existent or yet to be formulated into law.

The Gambia has established, by law, various anti-corruption bodies and agencies, ranging from the Gambia Financial Intelligence Unit (GFIU) to the Gambia Public Service Commission (GPSC), the Gambia Public Procurement Authority (GPPA) and the Assets Recovery and Management Corporation (AMRC). These independent bodies are equipped to improve reporting mechanisms in the fight against corruption. Nevertheless, the Gambia Anti-Corruption Commission Act passed into law in 2012 established the composition and functioning of a national anticorruption body, yet has not been implemented. More generally, the poor implementation and application of recommendations and findings by commissions of enquiry points to state capture by corrupt interests.

The Constitution of The Gambia provides that a political party shall not accept any donations from any person who is not a citizen of The Gambia or from any corporation or body. In order to ensure transparency, political parties are required to disclose to the government revenue, sources of revenue and assets, and also to publish annually audited financial statements detailing administrative expenses. In practice, the rules are flawed and poorly enforced. Legal definitions of what constitutes a donation or contribution and restrictions on donations to political parties and candidates are missing; in addition to poor identification of donors (whether anonymous or international) and whether third-party donations or loans are acceptable, restricted or prohibited.

The regulation of public officials' conduct is set out in the 1997 Gambian Constitution, the Public Service Commission Act and the Personnel Management Office Act. Provisions include avoiding nepotism, favoritism and conflicts of interest; receiving gifts or donations in customary settings only when providing a declaration; and submitting written declarations of all property and assets to the office of the Ombudsman six months from the date of appointment, and biannually thereafter; while property and assets of the Ombudsman are declared to the National Assembly. Sanctions and disciplinary measures for defaulters are contained within the law. Despite this, assets declared by officials of the Ombudsman's office are kept by the Finance and Public Accounts Committee of the National Assembly, and are never made public. Although the laws of The Gambia prescribe administrative, criminal and other sanctions for non-compliance, they are seen as ineffective, disproportionate and do not serve as a deterrent in practice.

The Gambia's Procurement Act, amended in 2014, prohibits corrupt practice, which includes the offering, giving, receiving, or soliciting of anything of value to influence

the action of a public official in the procurement process or in the execution of a contract. The law ensures that the public has fair access to the goods and services they provide to the public, and prohibits the use of inducements to influence bidding and the procurement process, such as bribery and fraud. The Gambia Public Procurement Authority (GPPA) published a list of updated registered suppliers and contractors on the GPPA website in 2022. Since the beginning of 2022, it has updated periodic procurement reports, conforming with the Gambian Procurement Act 2014 and adhering to UNCAC article 10.

The management of public finances in The Gambia is regulated by the Constitution, as well as specific legislation, such as the 2004 Government Budget Management and Accountability Act (GBMA) and the 2014 Public Finance Act. In practice, the supervision of monetary transactions by the National Assembly has been weak. While the Minister of Finance and Economic Affairs (MoFEA) is accountable to the latter, along with the President, for budgetary decisions within his ministry, the distinction between the roles of the permanent secretary within the ministry and the minister himself are ambiguous. An independent task force is necessary in order to lodge and hear appeals.

In 2019, a new Access to Information Bill was approved by the National Assembly and assented to by the President in August 2021, in fulfillment of UNCAC articles 10 & 13.1. The number of private print, electronic, radio stations and other media operations has increased considerably since 1994. These include a number of community radio stations and wide use of social media as communication tools for the general public. Yet while civil society's active engagement in governance issues due to corruption has increased since the 2016 political impasse, with greater reporting on corruption cases and engagement in public debates hosted by independent media outlets, there are few measures promoting periodic review and reporting on corruption in the public administration in The Gambia.

The 2009 Judges Supplementary Code of Conduct Act guides judges in the performance of their judicial duties. Judges must uphold and exemplify judicial independence, strive to act with integrity, appear impartial, avoid improper judicial conduct, avoid civic and charitable activities and not engage in political activities, among other aspects. Nevertheless, weaknesses are apparent in terms of the independence of the Department of Public Prosecutions, which operates under the remit of the Attorney General and the Minister of Justice, thus acting as an extension of executive power. Moreover, the President of the republic is able to personally appoint the Chief Prosecutor at the Attorney General's office – a selection process which is not subject to public review.

The Gambia has a partial beneficial ownership registration and disclosure system in place. The Gambia also has an effective legal ownership registry that requires companies to register all of their legal owners. However, this information is generally

not available online. Registered companies in The Gambia are required to publish the annual accounts and audited accounts in the local newspapers and file a copy with the Corporate Division of the Ministry of Justice. In practice, however, enforcement of the rules prohibiting crimes laid down under the UNCAC is not fully respected.

New legislation on AML/CFT (2012) has replaced the 2003 Money Laundering Act. The former designates roles to all relevant, competent authorities responsible for implementation of measures such as customer due diligence (CDD), financial record-keeping, suspicious transaction reports (STRs) and investigating ML claims, among The Gambian financial infrastructure is based on the International Financial Reporting Standard (IFRS), and more recently, The Gambia successfully implemented a payment system to reduce the use of cash in the economy through 'Gamswitch' projects.

However, different bodies work separately on the investigation of money laundering, prosecution and legal affairs in The Gambia: the serious crime unit (fraud squad) and the GFIU. The GFIU is functional but needs to be more effective by assuming investigative functions in addition to its current administrative authority, and by sharing information about how it carries out its duties. There is no provision in domestic AML/CFT regulations which prohibits financial institutions from entering into correspondence banking with shell banks. Further, The Gambia has yet to domesticate most of the Conventions it has ratified, including the UNCAC in the area of AML.

The Gambia has enacted laws to punish acts of corruption and to pay damages. Yet despite the existence of regulations and institutions, The Gambia has yet to actively pursue the recovery of assets acquired through fraud from former and current public officials, individuals and groups mentioned in the 2018 Janneh Commission report. At the national level, the Janneh Commission seized numerous properties believed to have been fraudulently obtained by the former President, his close associates and family members. However, the sale of these large assets is not transparent and has not been publicly disclosed since 2018.

The aforementioned 2012 AML/CFT Act contains a comprehensive and innovative set of provisions on restraint, seizure and forfeiture of assets in relation to ML and TF, including procedures for property tracking, ensuring effectiveness of confiscation orders, and confiscation where a person dies or absconds, among others. Unfortunately, there is no effective mechanism in place to ensure efficient tracing and identification of ML and TF cases. The GFIU does not have the capacity to receive and analyze STRs to assist law enforcement agencies (LEAs) in the investigation of AML/CFT cases. No specialized training has been provided to personnel of law enforcement agencies, the GFIU, the Central Bank of The Gambia, and prosecutors, on the application of freezing and confiscation measures. The Gambia is falling behind in implementing and applying UNCAC article 54 fully.

The Laws of The Gambia provide that the court or competent authority may receive a request from the court or other competent authority of another state to identify, trace, freeze the property, proceeds or funds, to confiscate or forfeit in connection with money laundering offenses and may take appropriate measures. The Gambia has a bilateral agreement with the Republic of Senegal through the Senegalo-Gambian Permanent Secretariat (PSSG), to provide a level of international cooperation and asset recovery assistance. However, The Gambia has not considered establishing an asset forfeiture fund for other countries or authorizing asset sharing with other countries. Privileges are only granted to countries that have signed bilateral or multilateral treaties with The Gambia under the AML Act.

There are currently no provisions in domestic legislation providing for the disposal and return of confiscated foreign-origin assets, even in cases of autonomous confiscation. Although it has established The Assets Recovery and Management Corporation (AMRC), The Gambia is unable to pursue effective disposition of confiscated property, constrained by several factors such as the challenges of tracking assets abroad.

Table 2: Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comments on performance (e.g., <i>inadequate resources, lack of independence, strong expertise</i>)
Public Service Commission/Personal Management Office	Moderate	Lack of independence, however.
Gambia Public Procurement Authority	Poor	Inadequate resources, not transparent, lack of appeal, recourse and remedies.
Office of Ombudsman	Good	Lack of resources, but strong expertise.
Gambia Financial Intelligence Unit	Good	Strong expertise but lacks intricate Information Communication Technology system (ICT).
Central Bank of The Gambia	Good	Strong expertise but lacks effective and intricate ICT system.
Asset Recovery Management Corporation	Good	Due to insufficient resources, the mandate needs to be broadened to cover emerging asset recovery issues.
Ministry of Finance and Economic Affairs	Moderate	Excessive powers vested in the Permanent Secretary need to be addressed.

Director of Public Prosecution	Poor	Lack of independence, DPP office vacant for five years.
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Recommendations for Priority Actions

On government interaction with CSOs in the review process:

1. Ensuring, maintaining and increasing the participation of society through active civic engagement on corruption prevention.

On access to information:

2. The Gambian Government should strive to improve the application of information technology in the provision of government services, information exchange and communications transactions;
3. Using exclusive government printing paper to increase security in the process of exchanging information between government agencies and civilians through a shared system of symbols and signs;
4. Improving communication between government agencies and civil society by adopting the use of an official directory listing government websites, official email addresses and phone numbers of all elected and unelected officials to improve access to public services and information;
5. Establishing the Access to Information Commission to improve the ability of individuals and groups to seek, receive, appeal and impart information effectively;
6. The Public Procurement Authority (GPPA) should endeavor to publish a contract notice and other contract awards without further delay, both in a commercial bulletin and on the official GPPA website.

On UNCAC implementation into law:

7. The Gambian Government should consider a coherent process across the civil service to align with the guiding principles and characteristics of the UNCAC;
8. Implementing UNCAC Article 6 and immediately operationalizing an anti-corruption commission, and an Access to Information Commission
9. Expanding the definition of civil servants to include the President, Vice President, Speaker, Deputy Speaker and Members of Parliament, Ministers and all unelected officials working for and on behalf of the Republic;
10. Passing a comprehensive new electoral law consistent with UNCAC Article 7.3 on political party funding and denigrate the sources of campaign funds for presidential candidates;
11. Filling the vacancy of an independent office of the Director of Public Prosecution.

On application of the law in practice:

12. In addition to improving the Code of Laws, the government must fundamentally revise Constitutional Chapter XI: The Public Service Act (1991), GO, distinguish between the Public Service Commission and the Personnel Management Office and reintroduce the Civil Service Training Committee;
13. Taking action to curb the excessive concentration of power in the hands of the Permanent Secretary (PS);
14. Not only considering corruption prevention and asset recovery as UNCAC compliance issues, but also examining them through their intersection with other issues such as open governance, community participation and when mapping corruption risk factors;
15. The chief civil servant should seek to harmonize and enforce the use of a unique policy regulating codes of conduct, conflicts of interest, asset declarations, financial regulations and other civil service regulations to conform with UNCAC Articles 7.1, 7.2 and 7.4, as well as national laws;
16. The government should enact legislation to facilitate reporting of corruption and protection of whistleblowers to comply with UNCAC Articles 8.4 and 13.2;
17. Making efforts to integrate anti-corruption policies, draft a national anti-corruption strategy and integrate it into the national development plan. Other general trends related to sustainable development have yet to be developed and adopted;
18. Urgently passing legislation to secure tenure for unelected officials. Currently, only members of the judiciary enjoy such privileges;
19. Striving to ensure that the rule of law is not replaced by norms that encourage corruption and increase the risk of deteriorating governance.

III. Assessment of Review Process for The Gambia

Below are details on transparency in the UNCAC review process, the country visit, civil society and private sector participation in The Gambia.

The national focal point is Bubacarr Jaiteh, a state counsel at the Attorney General's Offices and the Ministry of Justice, who is available to discuss UNCAC and other conventions. However, the majority of civil society, including officials, are more or less unaware of the vetting processes of UNCAC and other anti-corruption conventions.

The Gambia is conducting its second cycle review under the UNCAC. In February 2021, the Gambian government made a formal request for technical assistance from UNODC for training on the production of the country's UNCAC review report, despite the fact that the country successfully completed its first review cycle in 2017. UNODC has yet to respond to the relevant request made by the national focal point, according to our last conversation.

Table 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	yes	Information about country focal point was shared.
Was the review schedule published somewhere/publicly known?	no	Not yet.
Was civil society consulted in the preparation of the self-assessment checklist?	yes	Consultations are ongoing.
Was the self-assessment checklist published online or provided to civil society?	no	Not yet.
Did the government agree to a country visit?	yes	A country visit has been agreed to by the government.
Was a country visit undertaken?	no	Not yet.
Was civil society invited to provide input to the official reviewers?	no	Not yet.
Was the private sector invited to provide input to the official reviewers?	no	Not yet.
Has the government committed to publishing the full country report?	unknown	Not yet.

Access to Information

The Gambia has non-disclosure clauses in its legislation and the majority of government institutions apply them extensively in practice. For example, some provisions of the 1997 Constitution, notably Chapter XXI: Section 223 on Declaration of assets and also Chapter 2: 02115 of the GO concerning appointments, promotions, resignations and retirement, are confidentiality clauses cited by officials as reasons for refusing to provide publicly available information. In general, almost all officials expressed during several face-to-face meetings that the confidentiality clauses would be better applied if they were clearly defined in The Gambia's laws in relation to the classification of top secret, secret, confidential and general information.

A number of other challenges or obstacles were encountered in obtaining the required information. This included accessing government websites, which are poorly managed and non-functional at best. There are also legal regulations that are changed for mistakes and/or abuses. For example, Section 02115 of the Code of Conduct⁵ provides that the appointing authority ensures that all officials it appoints sign a non-disclosure agreement, and Chapter XXI of the 1997 Constitution: Section 223, contradicts the spirit of access to information. These provisions have in most cases been used by officials to refuse requests for information. Difficult access to the necessary information was a challenge during the process of writing this parallel report.

In sum, relevant statistical information is not fully accessible, partly because it has not been compiled by the government. Some information is available, but only for Gambian authorities and civil servants. Significant improvements have been made in reporting on audited accounts and the government agency's performance.⁶

⁵ National Audit Office, Public Service Performance Audit Report 2022; available at: <https://nao.gm/#>, accessed 6 May 2022.

⁶ See National Audit Office Audit Reports, available at: <https://nao.gm/#>, accessed 6 May 2022.

IV. Assessment of Implementation of Chapter II and Chapter V Provisions

Implementation of the Convention through Laws, Regulations and Practices

This section addresses Gambia's compliance with the provisions of UNCAC Chapter II on preventive measures and Chapter V on asset recovery.

Chapter II

With specific reference to Chapter II of UNCAC, the following articles have been commented on and analyzed:

Art. 5 – Preventive Anti-Corruption Policies and Practices

Legal framework

The Gambian Constitution of 1997, The Criminal Code (CC), The Code of Criminal Procedure (CCP), Anti-Money Laundering and Combating of Terrorist Financing Act of 2012 (AML/CFT Act), Economic Crimes Act (ECA), National Intelligence Agencies Act and Evidence Act, Revised General Order Code of Conduct and Public Service Rules and Regulations (GO), Gambia Public Procurement Act 2014 and Access to Information Act 2021 provide a set of rules and regulations that serve as a guide on how to promote integrity, honesty, exchange of information and a sense of responsibility in public offices can be promoted.

In principle, these policies reflect the principles of the rule of law, proper administration of public affairs and public property, integrity, transparency and accountability, but their application is flawed. National laws and regulations are largely being replaced by norms. The Gambia's efforts to integrate anti-corruption mechanisms into the National Development Plan (NDP) 2017-2021,⁷ were conspicuously absent. The Gambia is considering a new NDP from 2022, which will provide an opportunity for intensive campaigning on the integration of anti-corruption measures in all aspects of development issues.

There are currently seven bills relevant to anti-corruption principles and characteristics that would also improve Gambia's obligations under the articles of UNCAC. These bills are pending before the National Assembly.⁸ The Gambia has not reached the

⁷ Ministry of Finance and Economy Affairs, National Development Plan 2018-2021, available at: <https://mofea.gm/ndp>, accessed 6 May 2022.

⁸ These bills are the Anti-Corruption Bill 2019, the Criminal Offences Bill 2020, the Criminal Procedure Bill 2020, the Mutual Legal Assistance and Criminal Matters Bill 2019, the International Crime Bill

threshold to join the Open Governance Partnership (OGP), and the country has yet to launch a meaningful campaign to reflect the global agenda to ensure transparency in governance.

Deficiencies

Aware of the fact that The Gambia is a common law country, Gambia follows the dualistic approach in dealing with international agreements, conventions and protocols as ratification does not make them binding unless the country makes them binding after they have been domesticated.

Anti-corruption measures, while progressive and a good attempt to control corruption risk factors, completely ignore two preventive aspects: increasing and disseminating knowledge on how to report, prevent, detect and prosecute corruption; and the need for specialized personnel and training to perform their duties. There are some serious issues that have not been addressed by anti-corruption measures:

- While anti-corruption measures are progressive and a good attempt to curb corruption risk factors, they completely ignore essential preventive aspects: increasing and disseminating knowledge of reporting, prevention, detection and sufficient independence of anti-corruption agencies and the need for qualified manpower and training to perform their duties.
- There is a lack of interdepartmental information sharing and collaboration, further weakened by an ineffective ICT system and single-source paper government documents such as receipts, letterheads and forms.
- The constitutional provision that allows government entities to operate within the confines of public service regulations is honored in several government agencies, while at the same time some government agencies have an additional internal control regime totally different from the GO.
- Internal anti-corruption monitoring and application measures are not enforced, do not exist or have yet to be formulated by law. The possibility of insufficient application of anti-corruption measures can lead to an increased risk of corruption in the public sector.

Art. 6 – Preventive Anti-Corruption Body or Bodies

The Gambia has established by law the following functional anti-corruption bodies, some of which have legal guarantees and are adequately or inadequately funded and resourced to comply with Article 6 of the UNCAC: The Gambia Financial Intelligence Unit (GFIU) and GFIU National Coordinating Committee, The Gambia Public Service Commission (GPSC), The Gambia Public Procurement Authority (GPPA), The Assets Recovery and Management Corporation (AMRC), The Supreme National Audit Office (NAO), The Office of the Ombudsman, The Gambia's Economic

2020, The Constitution of The Gambia (Promulgation) 2020, and The Gambia Public Procurement Bill 2020, available at: https://www.assembly.gm/?page_id=709, accessed 6 May 2022.

Crime Unit of the Gambia Police Force and the Accountant General Department. In practice, however, these anti-corruption agencies lack effective and efficient channels of communication with the various public offices, CSOs and advocacy groups, although these agencies are required by law to report annually to the National Assembly Public Account and Public Enterprises Committee and to have published their reports. However, this excludes CSOs and other relevant individuals and groups.

The Gambian Ombudsman is mandated to: (a) investigate complaints of injustice, corruption, abuse of power, maladministration and unfair treatment of persons, officials in the performance of official duties; (b) to investigate complaints about the functioning of the Civil Service Commission, the administrative and security organs of the state, the police service and the penitentiary services; insofar as the complaints relate to these services, in which a balanced structuring, equal access for all to recruitment, or fair administration have not been achieved.

The Gambia has its own anti-corruption regime created through collaboration with stakeholders from the international community and NGOs, but retains its base in the UK regulatory regime.⁹

Good practices

- The GFIU is also tasked with disseminating anti-corruption information and conducting targeted awareness-raising activities, and acts as a key resource for cross-border cooperation under Chapter V of the Convention. It shared a range of awareness-raising strategies and practices aimed at financial institutions, civil society organizations and the media, with particular reference to Articles 5, 7, 12 and 13 of UNCAC.
- The Office of the Ombudsman is commissioned to prepare an annual report in duplicate. A full version submitted to the Office of the President lists the identities of the complainants and institutions. A second report is validated by all stakeholders during a parliamentary public session but excludes identification of complainants and institutions.¹⁰

Deficiencies

- The Gambian governments should ensure that they take the necessary steps are taken to implement the recommendations and their decisions. Fully implementing the findings of the government appointed commission of inquiry,

⁹ United States Department of State, 2021 Investment Climate Statements: The Gambia, available at: <https://www.state.gov/reports/2021-investment-climate-statements/gambia/>, accessed 14 May 2022. These regimes include the Anti-Corruption Bill 2019, the Criminal Offences Bill 2020, the Criminal Procedure Bill 2020, the Mutual Legal Assistance and Criminal Matters Bill 2019, the International Crime Bill 2020, The Constitution of The Gambia (Promulgation) 2020, and The Gambia Public Procurement Bill 2020, available at: https://www.assembly.gm/?page_id=709, accessed 6 May 2022.

¹⁰ Office of the Ombudsman Report 2014: Appendix A, Chapter 163 of the Constitution 1997, and Appendix B The Ombudsman Act 1997, available at: <http://ombudsman.gm/reports/>, accessed 7 May 2022.

which has never been done, provides evidence that the institutions are not doing enough in the enforcement of anti-corruption policies and government decisions.

- The Gambia Anti-Corruption Commission Act (2012), passed in the National Assembly on 28 June 2012, which establishes the composition and duties of a national anti-corruption agency, has yet to be implemented. Even though it lacks essential ingredients of a functional anti-corruption agency. This led to the drafting of the 2019 Anti-Corruption Bill.¹¹ The Gambia should now seek the passage of the Anti-Corruption Act 2019 and take action to establish a financially independent national anti-corruption agency with prosecutorial powers.
- The GFIU has no powers to enforce money laundering and terrorist financing. Such matters are dealt with by the Inspector General of Police (IGP) and the Minister of Justice and Attorney General. The GFIU reports directly to the National Assembly and the agency does not publish or share reports, preventing civil society organizations and the media from reporting on its activities.

Art. 7.1 – Public Sector Employment

Legal framework

Chapter XI of the 1997 Constitution, Section 168(1) provides for the Head of Civil Service and 168(2) states that the Head of Civil Service shall not hold any other profit or salaried office in the service of The Gambia. The Head of the Gambian Civil Service is responsible for advising the Cabinet on senior management matters and issuing general decrees. Section 84(1) of the 1997 Constitution of The Gambia provides for the establishment of a Prosecutor's Office reporting to the civil service. Section 221(3)(b) also provides for the National Assembly to pass legislation providing for the adoption of a supplementary code of conduct and disciplinary bodies for the Public Service Commission (PSC).¹² The public prosecutor's office is subjected to the General Regulations for the Public Service and the Code of Conduct for the Public Service. According to the Rules, a Special Committee for Disciplinary Proceedings for Public Employees was set up.¹³

The 1997 Constitution contains provisions for public service positions. The Personnel Management Office (PMO) and the PSC both serve as principal advisers to the Head of Civil Service and are responsible for the human resources functions of the civil

¹¹ National Assembly Business Bill Tracker, available at: https://www.assembly.gm/?page_id=709, accessed 7 May 2022.

¹² Personnel Management Office Rule Books, available at: <https://www.pmo.gov.gm/rule-books>, accessed 7 May 2022.

¹³ Public Service Commission Regulations, available at: https://www.psc.gov.gm/?fbclid=IwAR1AK51w-XltSjzhIQOufSyFPZKzB6A_cAC28bve0cs-dSnaEa_LPfarVPQ, accessed 7 May 2022.

service. Section 172 of the 1997 Constitution, Part 2(1), provides for the establishment of the PSC, which shall consist of a Chair and at least two or more than four members appointed by the President. All members of the PSC are full-time civil servants.

The mission of the PSC is to maintain an effective and efficient public service by ensuring that individuals who meet the hiring criteria are hired, trained, and disciplined in an open, fair, and impartial manner. The PSC provides efficient and cost-effective services to all public employees by formulating, administering, and overseeing the implementation of government policies related to the hiring, development, and disciplining of public employees, as required by the Constitution. The PSC act has the authority to inspect government offices, examine official documents, books or other records, seek information and advice from any public official, collect evidence of oaths and oath-taking when incidental or useful in the performance of its duties. The Gambian Constitution, Section 169(a)(b), protects public officials from harassment for having diligently performed their duties under the law.

The PMO has a broad statutory mandate under the Public Service Act 1991 to organize administration and direct management of human resources. Cabinet has given the PMO responsibility for leading, coordinating and supporting programs of civil service reform that have been ongoing for many years. In many ways, the PMO mandate is similar to that of PSC.

The Civil Service Reform and Planning Unit (CSRPU) has the functions of administrative coordination, conducting legal and policy reviews, monitoring and evaluating public service for deficiencies. CSRPU resources under the control of the PMO.

Good practices

- The President is empowered to appoint public officials subject to review and approval by the National Assembly. In addition, permanent secretaries in government ministries exercise the power to appoint civil servants to their ministries. The process of selecting candidates for appointment and promotion to public office is carried out by the Minister in an official capacity as appointing officer. The appointing officer also has the power to retire and discipline officers.
- The Gambia enacted the National Training Authority Act of 2002 (NTA) which established a Training Standards Agency tasked with developing and promoting standards, principles and systems of criteria for national professional qualifications and the licensing and oversight of awarding bodies. The NTA provides accreditation, monitoring and evaluation of assessment and training centers and oversees instructors and trainers engaged in technical and vocational education and training. It is accountable to the PAC in an annual report.

- The Government of The Gambia has embarked on a reform of the civil service over the past twenty-one years, covering all sectors including national security.¹⁴ The reforms aim to strengthen systems to promote transparency and avoid conflicts of interest in the public sector and partially meet the essential requirements of Article 7.1(a-c) of UNCAC.
- Any vacant public office must meet the requirements for appointment of an official to public office. Section 8(2) of the Public Service Act 1991 requires the appointee to have, in order of preference: citizenship, experience and expertise. Foreigners are appointed based on the qualifications required for the appointment.
- The appointment of a new person to a public office should initially serve a six-month probationary period. The period is also counted in the appointment to a new public office. Probationary periods may be extended to give the officer an opportunity to improve on any point where his or her work or conduct was unsatisfactory.
- Part IV, Section 17(a-c) of the Civil Service Act provides that civil servants may perform paid work in addition to normal public service duties. During the preparation of this parallel report, officials expressed satisfaction as the policy provides an opportunity for officials to engage in productive sectors outside of official business hours to earn additional funds for their daily needs and also as a preventive measure against corruption in public offices serves.
- Public officials have a legal obligation to provide the appropriate information requested by the public. In practice this is more complicated.
- According to Section 71(2) of the Constitution of The Gambia, a person cannot serve as a minister in the Cabinet of The Gambia if he/she is a member of the National Assembly or has the citizenship of another country. In addition, the Attorney General must have been a member of the Gambian Bar for at least five years prior to appointment.

Deficiencies

- In The Gambia, public sector jobs are widely advertised and require qualifications. The regulations provide for a review process by the other competent authority for unelected officials. However, the review process does not extend to elected officials, for whom the National Assembly should be responsible.
- Linking several functional activities of public offices to the offices of President and Vice President is a significant risk of corruption and an affront to the separation of powers.
- The mandates of the PMO and PSC are only partially implemented and do not comply with public service standards or the UNCAC articles on transparency, honesty, integrity and ethics. The relationship between the PMO, which acts as

¹⁴ Personnel Management Office Civil Service Reform Programs, 2018-2027 Strategy, available at: <https://www.pmo.gov.gm/others>, accessed May 2022.

secretariat, and the PSC, which acts as appointing authority, must be defined by an act of the National Assembly in order to give meaning to the rule of law and to enforce separation of powers in the civil service.

- More and more officials are convinced that corruption cannot be overcome. Evidence that public officials lack knowledge of what corruption is, and the skills and capabilities needed to control it is compounded by insufficient human resources. Therefore, in order to boost the morale of civil servants, a civil service loan program was introduced, which charges 5% interest and is administered by senior civil servants from government agencies. The system is a social assistance for civil servants.¹⁵ This practice is contrary to the Public Service Act 1991, the Gambia Financial Institutions Act, the Public Finance Act and Public Finance Regulations and the Constitution of The Gambia.¹⁶
- The delegation of powers from the Public Service Commission under Section III (2) of the 1997 Constitution and the Permanent Secretary's role as appointing officer, requiring newly appointed officials to sign a declaration of confidentiality, impedes corruption reporting in The Gambia and is extensively used to violate the rights of public employees, curtailing access to information for the general population.
- The public sector needs to improve its internal accountability mechanisms to ensure public sector accountability, safeguards, inclusive governance and inter-agency information sharing.
- Civil service reform included the passage of the Public Service Pension Act 2020.¹⁷ The new pension law competes with a larger scheme operated by the Social Security and Housing Finance Corporation (SSHFC). The latter offers better benefits compared to the new pension scheme, exclusively for civil servants, resulting in inequalities in social protection programs for some 45,000 workers across The Gambia.
- The Attorney General, Chief Justice and Cabinet Ministers, appointed directly by the President of The Gambia are required to take an oath before assuming the functions of their offices, and are not subject to public scrutiny.

Art. 7.3 – Political Financing

Legal framework

The funding of the candidacy is administered solely and entirely by the political party with due regard to Section 60 of the Constitution, which provides that no association,

¹⁵ Personnel Management Office Civil Service Reform Program, 2018-2027 page 9 (1.4.3) on civil service loan scheme, available at: <https://www.pmo.gov.gm/others>, accessed 7 May 2022.

¹⁶ Ministry of Finance and Economy Affairs Laws and Regulations, available at: <https://mofea.gm/>, accessed 8 May 2022.

¹⁷ National Assembly Business Bill Tracker, available at: https://www.assembly.gm/?page_id=709, accessed 8 May 2022.

other than a political party registered under or pursuant to an Act of the National Assembly, may be a candidate sponsored for public elections.¹⁸

Political parties in The Gambia are required by law to submit an audited annual financial report to the Independent Electoral Commission (IEC). Section 104(6)(b) of the Constitution provides that a political party is required to publish its audited financial statements annually and send a copy to the IEC.¹⁹

Section 104(7) of the Constitution provides that a political party shall not accept any donations from any person who is not a citizen of The Gambia or from any corporation or body. In order to ensure transparency, Section 60(1) requires political parties to disclose to the government revenue, sources of revenue and assets, and also to publish annually audited financial statements detailing administrative expenses. The audited report should be made public.

Deficiencies

- In practice, the rules are largely flawed and poorly enforced with impunity. Legal definitions of what constitutes a donation or contribution and restrictions on donations to political parties and candidates; identifying donors, including whether anonymous or international, and whether third-party donations or loans are acceptable, restricted or prohibited are not provided for in the laws of The Gambia.

There is no provision in national law that explains how a political party obtains its funding. However, most political parties are privately owned and receive funds from Gambian citizens locally and those living abroad.²⁰ The Constitution clearly provides that a candidate for political office is sponsored by a particular party and that party must be registered. It was confirmed by senior election officials through interviews that a series of interactive discussions with active political parties to pass legislation that would regulate political party funding failed to result in an agreement. Efforts to reach a compromise are still ongoing.

- The means to discourage governments from using state funds for electoral purposes and the availability of state subsidies for elections and parties, are not provided, but political parties have a memorandum of understanding that governs some of these UNCAC provisions.²¹ This is rarely implemented.

¹⁸ Independent Electoral Commission, The Gambia Constitution 1997, available at: <https://iec.gm/download-2/>, accessed 8 May 2022.

¹⁹ Independent Electoral Commission, Section 104(6)(b) Elections Decree, Cap 3:01, available at: <https://iec.gm/download-2/>, accessed 9 May 2022.

²⁰ Standard newspaper Gambia 26 October 2021, Alagie Conteh says, Account Blocked for Political reasons, available at: <https://standard.gm/gambia-news/alagie-conteh-says-account-blocked-for-political-reasons/>, accessed 29 July 2022.

²¹ 1997 Constitution of The Gambia, available at: <https://www.moj.gm/downloads>, accessed 29 July 2022.

Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations

Legal Framework

All of the laws and regulations in this section of the report are taken from the laws of The Gambia. Chapter XXI of the 1997 Gambian Constitution²² provides a code of conduct for civil servants and the country has introduced the Public Service Commission Act²³ and the Personnel Management Office Act²³ to strengthen the professional process of delivering public services. These regulations partially comply with UNCAC Articles 7 and 8.

Section 222(4) of the Constitution stipulates that an official shall avoid nepotism and favoritism in the performance of his duties. Section 222(10) states that an official shall not put himself in a position where his personal interests conflict with his duties or responsibilities. Section 222(11) prohibits bribery and Section 222(12) permits public officials to accept gifts or benefits from relatives and friends only to the extent and on such occasions as are customary. However, the receipt of a gift or donation by a public official at a public or official occasion will not be treated as a violation of this Code if an explanation is required if it is given to the office, department or agency represented by the public official: is handed over the gift received. The revised General Code of Conduct for Service Rules and Regulations contains similar provisions.

The Gambia, which is a party to UNCAC, has ensured that candidates for public office meet certain criteria or standards. Some of these public offices are the office of President, the Magistrate as provided in Section 67 of the 1997 Constitution, including the criteria for a candidate to be elected President. Therefore, a person qualifies for election as President if (a) he or she is a citizen of The Gambia by birth or descent, (b) he or she is at least thirty years of age, (c) he or she has had his or her habitual residence in The Gambia for the five years immediately preceding the election, (d) he or she has completed upper secondary school and (e) he or she is qualified to be elected as a member of the National Assembly. Certain criteria exist in Section 62(3) of the 1997 Constitution to prevent the appointment or election of a sentenced person for election to public office by the provisions contained in the domesticated statutes.

The General Orders for the Public Service of The Gambia (GO) provides the following in Chapter 3, Section 03102 on Conduct and Discipline:²⁴ Every officer has

²² Public Service Commission Act, available at: <https://www.psc.gov.gm/psc-regulations>, accessed 29 July 2022.

²³ Personnel Management Office Act, available at: <https://www.pmo.gov.gm/rule-books>, accessed 29 July 2022.

²⁴ Personnel Management Office Rule Books, available at: <https://www.pmo.gov.gm/rule-books>, accessed on 9 May 2022.

the right to express his or her own political views and, if qualified, may participate in elections. He may become a member of any political party or organization, but he may not accept any office, paid or unpaid, permanent or temporary, in any political party or organization, nor given speeches, participate in demonstrations or otherwise signal his support for any political party, organization, person or policy, nor is he obliged to do so as part of his duties.

Section 223 of the Gambian 1997 Constitution and GO provides that a public officer shall submit to the Ombudsman a written declaration of all property and assets owned by him or her and any liabilities owed by him or her, whether direct or indirect, at the end of every two years. This provision does not extend to family members. Civil servants are required to report their assets and interests to the Ombudsman's Office six months from the date of their appointment and every two years. Officials of the Ombudsman are required by law to submit declaration of their property and assets to the National Assembly.

GO contains the general principles of conduct dealing with the relationship of civil servants with the legislature and executive, the public, etc. These aspects are all included in Chapter 4 of the Code.²⁵ A public official is expected to obey the law. In the event of incorrect or incomplete information in declarations, defaulters will be sanctioned. Sanctions for defaulters are provided in Section 223(4)(a)(b) of the 1997 Constitution, in the case of a civil servant or other subject to disciplinary proceedings, disciplinary action by the competent person or authority; or in any other case for impeachment or, as the case may be, impeachment proceedings as provided for in the Constitution or other law.

Good practices

- The Gambian Civil Service Act²⁶ provides for a probationary period during which a public official's performance is measured, as required by the General Orders.
- The Gambia has established a Training Committee which reviews and advises the Minister or the Head of the Public Service on all matters affecting the training of officers who are referred to the Training Committee by the Minister, the Head of the Public Service or the PMO Permanent Secretary.²⁷
- The Gambian Civil Service allows civil servants to perform paid work in addition to their normal civil service duties provided these functions do not involve government resources and requires approval by the Head of Public Service.²⁸
- A unit has been set up to develop, implement and evaluate the functional activities of the public service. The Civil Service Reform and Planning Unit

²⁵ Ibid.

²⁶ Ibid.

²⁷ Personnel Management Office Rule Books, available at: <https://www.pmo.gov.gm/rule-books>, accessed on 9 May 2022.

²⁸ Ibid.

(CSRPU) is operated from the PMO under the supervision of the Minister and Head of Public Service. The CSRPU consists of thirty-one members selected from among civil servants and one representative from the Gambia Chamber of Commerce and Industry.²⁹

- The Gambia has recently established a ministerial office in the Office of Human Resources to comply with the Civil Service Act (1991);³⁰ and to oversee public service duties.

Deficiencies

- The process of enacting a code that requires public officials to declare business, commercial and financial interests or activities that could create a potential conflict of interest and not to take advantage of their previous position after leaving office or disclose confidential information, are only partially applied in The Gambia.
- The role of the Ombudsman and PSC appear to be in duplicate: both institutions are required by law to perform similar functions, compromising the Ombudsman's independence.
- The revised General Orders for Public Service of The Gambia under Section 02115 requires appointing authorities that all appointed officers sign a non-disclosure agreement. However, secrecy is not defined in either the law or the codebooks and in practice prevents elected and unelected officials from reporting on corruption, opening contracts and facilitating access to public/civil service information. The Gambia must adopt official definitions of secrecy and transmission. The preamble to the Civil Service Act (1991)³¹ provides interpretations of transfer, but is used to punish officials with dissenting views by making it impossible for the official to return to the ministry or department in which he was previously employed before the move.
- The Gambia has yet to comply with the Annex to UN General Assembly Resolution 51/59 of 12 December 1996³² on the status of civil servants after leaving office and Article 8.3 of UNCAC.
- Officials are obliged to declare their assets. Such documents may be produced in proceedings before a court of competent jurisdiction other than a district court or in proceedings before a constitutionally appointed commission of inquiry and in disciplinary proceedings against any person. In practice this provision has never been used or tested in the courts.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² United Nations general Assembly resolution of 12 December 1996; available at: <https://www.cambridge.org/core/journals/international-legal-materials/article/abs/united-nations-general-assembly-resolution-5159-on-action-against-corruption/540789329B92E4EC92225E3A2A18F110>, accessed 9 May 2022.

- The laws of The Gambia do not provide for an independent mechanism to cross-check declarations of assets submitted to the Ombudsman or any other body to ensure that the filings are complete and accurate.
- The Office of the Ombudsman is the legal custodian of all property receipts declared by unelected public officials. The Office of the Ombudsman remains courteous and considers asset declarations to be sensitive issues due to the general perception of the safety of officials declaring assets. Assets declared by officers of the Office of the Ombudsman are kept by the National Assembly Committee on Finance and Public Accounts and are never made public.
- Standards and codes in Section 223(4)(a)(b) of the Gambian 1997 Constitution are merely ambitious and are not designed to be enforceable. Although The Gambia's laws provide for administrative, criminal and other sanctions if officials fail to comply with applicable regulations, sanctions are ineffective, disproportionate and do not serve as a deterrent.
- There is no specialized body or staff tasked with enhancing transparency and preventing conflicts of interest within government. No institutional structures and procedures monitor compliance with conflicts of interest laws, including monitoring and reviewing declarations of interests and assets and applying appropriate sanctions.

Art. 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection

There is an urgent need for a corruption reporting mechanism, including anonymously, for all incidents that can be considered as UNCAC-related crimes and which have negative impacts on the public and private sectors.

Deficiencies

- The Gambia has yet to enact legislation encompassing measures to facilitate the reporting of acts of corruption by officials to the relevant authorities for redress.³³

Art. 9.1 – Public Procurement

Legal framework

The Gambia's Procurement Act 2014³⁴ prohibits corrupt practices that involve offering, giving, receiving or soliciting anything of value to influence the actions of an official in the procurement process or the performance of a contract.

³³ National Assembly Business Bill Tracker, available at: https://www.assembly.gm/?page_id=709, accessed 9 May 2022.

³⁴ Gambia Public Procurement Act 2014, available at: <https://gppa.gm/all-documents/>, accessed 29 July 2022.

Section 28(1) of the GPPA Act 2014 states that the public officials shall not be involved in government procurement of goods or services. The government has an obligation to ensure that the public has fair access to the goods and services they provide to the public and not to engage in corruption. A bidder should not engage in or encourage corrupt practices, including offering improper inducements and deceptive practices or misrepresentation of facts, to influence the performance of a contract to the detriment of the procuring organization. Bidders should not be allowed to set bid prices at artificially uncompetitive levels and bid to avoid competition, the law says. The law prohibits the use of incentives to influence bids and the procurement process, such as bribery and fraud. Section 29(1) of the GPPA Act 2014 provides that the authority protects the government from actual or potential harm by excluding a potential supplier or bidder from participating in public procurement for a period of at least one year and no more than five years thereafter.

Gambian Public Procurement Regulations (GPPR)³⁵ also provide that subject to the obligation to terminate in the contract, the procurement organization has the right to terminate the contract in whole or in part for default if the supplier fails to perform the supplies, deliverables or services within the time specified in the contract time, or failure to perform the contract is jeopardized to terminate the contract if the supplier fails to deliver the goods or performs any other service.

Section 155(6) of the GPPR³⁶ provides for the suspension of the supplier's right to participate in public procurement pending the completion of the exclusion procedure where alleged grounds for exclusion include: conviction of fraud, forgery, falsification or destruction of records, giving false information, tax evasion, theft of property or other criminal or corrupt acts or omissions.

The Gambia's Anti-Corruption Laws contain laws or regulations that address conflict of interest in contracting or government procurement. Low-level corruption is rife and high-level corruption is likely to be rife but remains underreported. Companies importing goods through Banjul Port report that they are regularly asked for bribes.³⁷

Good Practices

- The GPPA published a list of registered suppliers and contractors on the GPPA website in 2017.³⁸
- The GPPA provides training and has established and oversees specialized procurement committees in all government agencies.³⁹ The Procurement Unit

³⁵ Ibid.

³⁶ Ibid.

³⁷ Standard newspaper Gambia, US says gov't turns blind eye to corruption, 23 July 2021, available at: <https://standard.gm/gambia-news/us-says-govt-turns-blind-eye-to-corruption0/>, accessed 29 July 2022.

³⁸ Gambia Public Procurement Authority Suppliers, available at: <https://gppa.gm/#>, accessed 29 July 2022.

³⁹ Ibid.

is an established entity within the procurement body created to carry out all procurement/purchasing activities of a public office in accordance with national procurement laws. The Procurement Unit has responsibility and accountability for planning and managing procurement/purchases in an efficient and cost-effective manner, and works closely with internal audit.

Deficiencies

- A rise in abuse of office and related vices⁴⁰ has impacted the well-being of the Gambian people. However, the will to fix such problems is not there.
- Government agencies are required under the GPPA law to prepare and submit an annual procurement plan, but in practice procurement processes are not followed transparently.
- The GPPA is the final authority to issue an award notice to determine the winner. There is an award threshold that allows public bodies to award contracts through a single window and/or bidding process. In practice, there are shortcomings and cases of conflicts of interest, insider trading and bribery are common.⁴¹ Since 2003, the GPPA has not published previously concluded procurement contracts, which are requirements of the Procurement Act and Article 10c of UNCAC.
- Despite the complexity of the procurement process, no complaints have been received by the GPPA. However, cases of collusion and non-delivery in the supply chain were disclosed by the public procurement authorities during the preparation of this parallel report, yet no immediate action was taken.
- Pursuant to Section 28(1) GPPA Law, Specialized Procurement Units (SPU) are established in all government agencies and consist of: an Accountant, a Budget Officer/Finance and a Procurement Officer. In practice, however, there are a number of challenges including non-adherence to established procedure.
- Final SPU decisions are published in an award bulletin, which is an internal GPPA mechanism. However, the GPPA was unable to produce copies of procurement notices between 2003 and 2020 after being asked to do so during face-to-face meetings with GPPA officials during the preparation of this report.
- The GPPA and the National Audit Office are not collaborating on reports, reflecting a breakdown in communication between public institutions and officials.
- Form 041, also known as the supplier evaluation form, is sent to suppliers after the contract has been signed. These documents are never published or made available to the public.

⁴⁰ Standard newspaper Gambia, US says gov't turns blind eye to corruption, 23 July 2021, available at: <https://standard.gm/gambia-news/us-says-govt-turns-blind-eye-to-corruption0/>, accessed 29 July 2022.

⁴¹ Standard newspaper Gambia, GPPC denies corruption over D50 million printer nepotism, 19 May 2022, available at: <https://standard.gm/gambia-news/gppc-denies-corruption-over-d50m-printer-nepotism/>, accessed 29 July 2022.

- The GPPA compliance unit occasionally conducts on-site visits to public facilities, but the outcome of such visits is not made public.
- The GPPA treaty committees are subject to an oath on Form 012, however the selection, review process and reporting mechanism of the GPPA treaty committee is not widely known.
- The application of procurement standards in national e-governance is deficient due to the lack of information technology platforms that control, coordinate, uncover or prevent corruption in everyday government life in The Gambia. Open contracts have yet to become the norm in Gambian public office and business.
- The non-disclosure clauses in statutory and proprietary policy frameworks as applied to government procurement increase vulnerabilities and have led to failures in the application of an effective and efficient open procurement and reporting system in The Gambia. The Gambian civil service is infiltrated by cronies who help prevent reporting of procurement corruption.

Art. 9.2 – Management of Public Finances

Legal framework

The governance and legal framework for managing public finances are provided for in Chapter IX of the 1997 Constitution, the Public Finance Act 2014, Public Finance Regulations and the Government Budget Management and Accountability Act (GBMA) 2004.⁴² The Constitution provides the primary legal framework for managing public finances in The Gambia, specifically Sections 150-154.⁴³ The Public Finance Regulation sets out the processes, procedures, requirements and obligations related to public finances that government institutions should comply with.

The main competent courts are the High Court and the Special Criminal Court. They have the power to hear and determine all crimes of theft involving public property and funds. The attitude of the courts in deciding cases of breaches of public finances is found in Sections 86-94 of the Constitution, which provide for corruption and abuse of office. Section 70⁴⁴ gives the Minister of Finance and Economy Affairs broad powers to act and or impose sanctions if the public finance procedure is violated.

An act of the National Assembly provides for the control and management of public funds for the powers and duties of the legislature and executive in the preparation, submission, approval, execution and reporting of the state budget. The law covers the duties and responsibilities of the Ministry of Finance and Economy, the Minister and the Permanent Secretary in preparing the national budget, accounting

⁴² Ministry of Finance and Economic Affairs, Laws and Regulations, available at: <https://mofea.gm>, accessed 10 May 2022.

⁴³ Ibid.

⁴⁴ Ibid.

and reporting on the state budget. It also includes issuing financial instructions for the proper implementation of the law to meet the provisions of UNCAC Article 9.2.

Sections 16, 17, 18 of the GBMA provide that the Minister of Finance may temporarily invest in The Gambia and elsewhere monies from consolidated funds that are not immediately needed and if monies from the funds are invested, the interest it earns together with the investment is considered part of the consolidated funds. Section 18 provides that the PS may enter into an agreement with any bank for the receipt, custody, payment or transfer of public funds either within or outside of The Gambia, or for any other matter affecting government banking.

Good practices

- The Minister of Finance and Economic Affairs is accountable to the President and the National Assembly for the political and other decisions of his ministry.
- There are restrictions on withdrawals from extrabudgetary funds or from state bodies' own funds: such transactions are approved by the Minister of Finance and Economy Affairs.
- The Government Budget Management and Accountability Act (GBMA) imposes restrictions on opening official accounts with domestic or foreign banks without the authority of the Permanent Secretary.
- The GBMA provides for the temporary investment of money from the national treasury that is not needed immediately. In practice, however, these measures are not fully applied.
- Civil society organizations are currently working to uncover violations of existing public finance regulations. In particular, the National Audit Office has increased collaboration with CSOs to disseminate audit reports to the general population.

Deficiencies

- There is a worrying trend towards excessive powers, which are mainly discretionary powers, delegated to the Permanent Secretary within the Ministry of Finance and Economic Affairs (MoFEA). In addition, the right to lodge a complaint with the Minister is inadequate since the PS and the Minister are practically the same person. An independent task force should therefore be set up to hear appeals.
- In practice, government progress in budget execution, compliance with financial operations and proper administration of budgetary agencies do not fully comply with UNCAC Article 9.2(d).
- In practice, the National Assembly has not adequately supervised monetary transactions.

Art. 10 and 13.1 – Access to Information and the Participation of Society

Legal framework

Constitutional provisions on this subject are found in Chapter XIX, namely: Section 207 on Media Freedom and Responsibility; Section 208 on Responsibility of State-Owned Media; Section 209 on Restrictions on Rights and Freedoms; and Section 210 on the Establishment of a National Media Commission. These are the legal framework conditions that offer media professionals orientation when carrying out their journalistic tasks. Section 4.2.5 of the GO on relations with the public recognizes the right of the public to have access to information, except information that is specially protected by law or classified or restricted, but these measures are inconsistent with Articles 10 and 13.1 of the UNCAC.

There is sufficient evidence that the problems related to access to information arise from conflicting provisions within the 1997 Constitution. These problems stem from the dysfunctional administration that emerged after the 1994 military takeover and subsequently accelerated corruption, dishonesty, and continued abuse of public office for private gain up until 2016.

The Gambia Access to Information Bill (2019)⁴⁵ has been unanimously approved by the National Assembly. The Access to Information Act (2021) provides a grievance mechanism if information is denied. However, the operationalization of the information commission is far behind schedule. The Access to Information Act 2021 is based on the African Union model law on right to information.⁴⁶ The new act missed the opportunity to redefine confidentiality clauses to eliminate mixed reactions from some of the public office responses received when seeking information for public use. There is clear government willingness to apply the Access to Information Act 2021. However, the implementation of the Act is managed by officials who act as public relations officers, often providing watered down information. If available, the applicant must request approval in writing from their immediate supervisor. In many cases, the opportunities to obtain relevant information are limited. This often compiles stakeholders to rely on secondary sources of information.

The Gambia has yet to take steps to enable public bodies to produce regular reports on corruption risks and factors in public administration under the provisions of Article 10 of the UNCAC. Under the same article, the fundamental right to access information in the public and private sectors is enshrined, and compels states party to the Convention to domesticate law to enhance transparency in the public administration. The country needs to do more in its efforts to use the UNCAC to influence the daily lives of the Gambian people, in particular eliminating instances of information concealment and ensuring independent public prosecution of corruption offenses.

Good practices

⁴⁵ Global Right to Information Rating, The Gambia, available at: <https://www.rti-rating.org/country-data/Gambia/>, accessed 10 May 2022.

⁴⁶ Ministry of Information and Communication Infrastructure, Access to Information Act 2021, available at: <https://www.moici.gov.gm/downloads>, accessed 10 May 2022.

- The Access to Information Bill was initiated entirely by CSOs in cooperation with the Gambia Press Union and presented to the National Assembly after validation of the draft and with the participation of all sectors of society including The Gambia Bar Association.
- CSOs and the media have recently become more involved in governance, with increased involvement of CSOs and media houses in budget preparations, government spending monitoring and reporting mechanisms. For example, newspaper publications on public service corruption cases involving officials have become commonplace.⁴⁷
- Access to information about the processes and procedures by which the public sector makes and implements decisions has increased in particular, with the annual publication of participatory budgeting by the Ministry of Finance⁴⁸ and in the annual reports of State-Owned Enterprises, government agencies and departments overseen directly by parliamentary committees. The reports are available at the National Library, but only in paper format.
- The number of private print, electronic, radio and other media companies has increased significantly since 1994. These include a number of community radio stations and the widespread use of social media as a means of communication, as well as the use of mobile applications to enhance financial transactions such as paying bills, local money transfers and daily monetary activities.
- Public debates across multiple independent media outlets are common. The media played an important role in reporting on the December 2021 presidential election, covering elements such as voter registration, candidate screening, campaigning, and election observation.⁴⁹

Deficiencies

- Access to information in The Gambia is extremely difficult and does not fairly address all concerns, failing to comply with legal measures designed to ensure citizens report corruption cases without fear of any resulting reprisals.
- Since the transition from authoritarian to democratic governance, fewer cases have been brought against media outlets, reporters, individuals or CSOs. Recently, however, there has been an intense exchange between a civil society activist and the government on accountability relating to public procurement, budgetary allocations and absenteeism of parliamentarians.⁵⁰
- Information hoarded by officials is discouraging exchanges between the citizenry through a common governance system that is supposed to drive the

⁴⁷ The Standard Newspaper, Corruption, available at: <https://standard.gm/?s=Corruption>, accessed 10 May 2022.

⁴⁸ Ministry of Finance and Economic Affairs publication, Laws and regulations, available at: <https://mofea.gm/>, accessed 10 May 2022.

⁴⁹ The Voice Newspaper, Gambia Elections results, available at: <https://www.voicegambia.com/?s=Election+results>, accessed 10 May 2022.

⁵⁰ The Standard Newspaper, Madi Jobarteh, available at: <https://standard.gm/?s=Madi>, accessed 10 May 2022.

national development plan. It is noted that public office holders withhold basic information about the functional activities of their respective public office.⁵¹ This practice reduces awareness of how public officials exercise the powers associated with their functions.

- Rules and regulations enshrined in the 1997 Constitution weaken real political intentions to provide accurate information when needed. Officials apply strict rules to deny access to information, such as annual reports on confiscated funds or the public sector employment index. Despite noticeable advances in access to information law, certain rules and regulations are still used to deny access to public service information.⁵²
- The public service has yet to put in place procedures to enable the general population to obtain information about its decision-making processes, where appropriate, as required by Article 10 of UNCAC.
- The Gambia does not have a centralized web system connecting electronic administration in the public service, even if the country plans to host the Organization of Islamic Countries conference in 2022,⁵³ it will have to deal with the challenges of digitalizing the public service and the information platform.
- External and internal communication between public entities is not coordinated, so fraud and illegal activities are common.⁵⁴ For example, public agency letterheads are inconsistent and officials use personal email to conduct government business and do not keep wealth records. Receipts of royalty payments are printed on ordinary paper, which poses a significant risk of corruption in the sense that government revenues are at risk. During the preparation of this parallel report, the inconsistency in printing government documents on plain paper was raised with the head of civil service in the Personnel Management Office (PMO), the answer was unconvincing that changes could be made soon.

Art. 11 – Judiciary and Prosecution Services

Legal framework

Chapter VIII of the 1997 Constitution is dedicated to the judiciary and provides the qualifications, procedures and other guarantees of transparency and accountability in relation to the selection, appointment and removal of members of the judiciary in The Gambia. Sections 120(3) and 148(1) specifically deal with the functions of an

⁵¹ The Point Newspaper, Gambia, Concealment of information, available at: <https://thepoint.gm/search?q=Cocealment+of+information>, accessed 10 May 2022.

⁵² Ibid.

⁵³ The Gambia-OIC Secretariat Home Page, available at: <https://www.oicgambia.org/>, accessed 10 May 2022.

⁵⁴ Foroya Newspaper, Fraud in the Public Service, available at: <https://www.gambia.com/?s=fraud+in+the+public+service>, accessed 10 May 2022.

independent judiciary and the Judicial Services Commission, respectively.⁵⁵ The Chief Justice is responsible for allocating and distributing cases. The Constitution provides that the Chief Justice is responsible for the administration and oversight of the court. Therefore, it falls to him to assign a case to the judges as and when he sees fit.

Section 141 of the Constitution provides for both optional and mandatory retirement of sitting judges. According to the Constitution, a judge can retire upon reaching the age of 65, while it is compulsory for a judge of the Supreme Court to retire upon reaching the age of 70. A judge has immunity from all litigation: a judge or other person exercising power shall not be liable for any claim or suit for acts or omissions of him or her in good faith in the exercise of his or her judicial office.

Section 84(3) provides for the qualification of the head of the public prosecutor's office, Section 84(4) provides for the removal of the department head from office and Section 84(5) regulates the procedures for dismissing the head.⁵⁶ As for other members of the Judiciary, they are also subject to the General Orders and Service Rules of the Gambia Public Service Commission in relation to appointments, training, removal and performance management. The Office of the Public Prosecutor is part of the civil service under Section 230 of the 1997 Constitution of The Gambia.⁵⁷ Thus, Chief Prosecutors are required to report their assets with interest to the Office of the Ombudsman six months from the date of their appointment and at the end of every two years.

Section 24(2) of the 1997 Constitution provides that all proceedings relating to the determination of the existence or extent of a citizen's rights or duties shall be held before any other authority, including the notification of the decisions of the court or other authority in public and thus guarantees transparency. Exceptionally, this only applies if the law requires the interests of defense, public security, public order, public morals, children or the protection of the privacy of a party to the proceedings.⁵⁸

Good practices

- The Judges Supplementary Code of Conduct Act (2009) guides judges in the performance of their judicial duties. Judges must uphold and exemplify judicial independence, strive to act with integrity, appear impartial, avoid improper judicial conduct, avoid civic and charitable activities, not engage in political activities, avoid and exclude themselves from conflicts of interest hear and decide a case, act as executor, not hear cases, or decide cases of his or her former company when directly involved.

⁵⁵ Attorney general Chambers and Ministry of Justice, The Gambia Constitution 1997 (2002 revision), available at: <https://www.moj.gm/downloads>, accessed 11 May 2022.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

- The code of conduct prohibits any form of corruption within the judiciary. The Attorney General's Ethics and Disciplinary Committee is responsible for the ethical conduct of lawyers, as are members of the Public Prosecutor's Office. Anyone found deficient is punished by the committee, which also has a code of ethics for prosecuting misconduct. The Code also prohibits the same for attorneys found guilty of malpractice in the legal profession.
- If a judge is found to have a conflict of interest, Section 10 of the Code provides that in such cases the judge should resign and the said case be assigned to another judge.
- The code of conduct also applies to prosecutors and allows a prosecutor to self-retire and stand down from such cases pending his final decision.

Deficiencies

- The decisions of the Director of Public Prosecutions (DPP), who directs the prosecution, are subject to the approval of the Attorney General, as enshrined in the Constitution. This places him under the Minister's control and is an extension of executive power. Therefore, the department is not independent at the time of prosecution.
- The Constitution also empowers the President of the Republic to appoint the Chief Prosecutor at the Attorney General's Office. However, there is no public review in the selection process of a DPP.
- There is no established procedure in relation to the assignment and distribution of cases, particularly at the higher courts.
- In connection with the preparation of this parallel report by the CSOs and during interviews with officials, it was suggested that the DPP's office is vacant due to insufficient capacity in the MoJ.

Art. 12 – Private Sector Transparency

Legal framework

The Gambia has a partial beneficial ownership registration and disclosure system in place.⁵⁹ The Gambia also has an effective legal ownership registry that requires companies to register all of their legal owners. However, this information is not generally available online.⁶⁰

Registration of information on the legal ownership of the company is not required for bearer shares. Information is scanty on whether comprehensive legal ownership information is required for companies to be registered, nor is any legal business registration updated. Company registration information is not available online.

⁵⁹ Global Property Guide Property Rights Index in Gambia Compared Africa, available at: <https://www.globalpropertyguide.com/Africa/Gambia/property-rights-index>, accessed 18 May 2022.

⁶⁰ Attorney General Chambers and Ministry of Justices Business Registration, available at: <https://www.moj.gm/search?kw=Business+registration>, accessed 18 May 2022.

Effectiveness of beneficial, financial and legal ownership is required in business registration for corporations and limited liability partnerships.⁶¹

There are private foundations in The Gambia. However, registration of property information and online access for private foundations are not readily accessible. Registration of private foundations also requires a degree of local participation within the foundation.⁶² Registering domestic and foreign trust is not required and accessing the registration online is not readily available in The Gambia.⁶³

Good practices

- The MoJ has established a Corporate Division responsible for registering various categories of corporations and non-profit entities in The Gambia.⁶⁴
- Registered companies in The Gambia are required to publish the annual accounts and audited accounts in the local newspapers and file a copy with the Corporate Division of the MoJ.⁶⁵
- In practice, however, enforcement of the rules prohibiting crimes laid down under UNCAC is not fully respected.

Deficiencies

- The Gambia has yet to take steps to ensure cooperation between law enforcement and the private sector and to promote standards and procedures to ensure the integrity of the private sector is governed. Gambia has yet to fully domesticate UNCAC Article 12: 2(a-f).
- The Gambia has yet to ensure that the business register is updated annually and disclosure of beneficial and financial ownership is also made available online.

Art. 14 – Measures to Prevent Money-Laundering

Legal framework

The AML/CFT Act 2012 clearly assigns roles to all relevant competent authorities responsible for the implementation of its various components. The courts also have the power to prosecute and enforce the AML/CFT law.⁶⁶ The goals and tasks of the GFIU are clearly regulated in Section 3 and 4 of the law. Section 14(4) empowers the

⁶¹ Ibid.

⁶² Tax Justice Network, Financial Secrecy Index 2020: “Gambia: Private Foundations - Is Formal Registration Required?” <https://fsi.taxjustice.net/country-detail/#country=GM&period=22>, accessed 18 May 2022.

⁶³ Ibid.

⁶⁴ Attorney General Chambers and Ministry of Justices Business Registration, available at: <https://www.moj.gm/search?kw=Business+registration>, accessed 18 May 2022.

⁶⁵ Ibid.

⁶⁶ The Criminal Code of the Gambia is available in paper format only. See National Assembly publications, ‘National Assembly Business Bill Tracker’ to view the criminal code, which is currently in consideration stages, available at: https://www.assembly.gm/?page_id=709, accessed 11 May 2022.

GFIU to enforce their compliance, while Section 25 obliges the Reporting Entities (RE) to conduct Customer Due Diligence (CDD). RE are required to keep records for a period of 5 years. Section 33 requires RE to report suspicious transaction reports (STRs) related to money laundering (ML) or terrorist financing (TF); Section 43 specifies the obligations of the RE; and other powers of the Financial Intelligence Unit are provided in Sections 44-46. Customs authorities have the power to monitor the disclosure of currency at border posts under Section 48-50. Law enforcement officers are assigned to investigate ML/TF as provided in Sections 51-59, 61, 65 (Fine Orders), 70, 75, etc.⁶⁷

All predicate money laundering and terrorism offenses listed in Schedule II of the AML/CFT Act (2012) are criminal offenses in The Gambia. Section 2 of the AML/CFT Act 2012 states that criminal conduct is any conduct punishable by six months imprisonment; thus, the predicate offenses of money laundering and terrorist financing offer the widest range of offences. The threshold therefore covers a wide range of crimes.

The Money Laundering Act 2003 was revised and new AML/CFT legislation was enacted in June 2012. All recommended Designated Non-Financial Business Professions (DNFBPs) have been included, with the exception of non-profit organizations (NPO). It should be noted that all NPOs are registered and overseen by the NGO Affairs Agency: a regulatory body with statutory powers to register and accredit the status of civil society organizations and also to regulate their activities. The Gambia ratified the UN International Convention on Combating the Financing of Terrorism 1999 and the UN Convention against Corruption 2003. The Anti-Terrorism Act 2002 and the Anti-Money Laundering and Combating Terrorism Financing Act 2012 domesticated the requirements of the UN Convention on Combating the International Financing of Terrorism. The Gambia also ratified the OIC Convention on Terrorism in 2012.⁶⁸

Good Practices

- All 20 predicate offenses under the FATF Recommendations were identified as money laundering and terrorist financing predicate offenses. In addition, the predicate offenses were criminalized in the Criminal Code and laws of the National Assembly.
- The Customer Due Diligence Policy was published in 2007 for financial institutions and a revised version was issued. The CDD is available in paper format.

⁶⁷ Gambia AML/CFT Act 2012, available in paper format only from the GPPC, accessed 11 May 2022.

⁶⁸ Ibid.

- All RE must file STRs on TF (see Section 33 of the Act). The GFIU received 2 STRs on TF cases. In 2017, a Sao Tome forex transfer was seized.⁶⁹ Details of other alleged illicit money transfers are yet to be released.
- The CBG and the GFIU have jointly conducted on-site inspections for 12 commercial banks operating in The Gambia over the past four years.⁷⁰ The audit focused, among other things, on the oversight of banking for compliance with financial regulations, particularly AML/CFT operations, including CDD, record-keeping, STR reporting, compliance and internal monitoring, AML/CFT programs and implementation, and staff training. All these audit reports are filed with the Financial Regulator and locally in the Gambian banks.
- The AML/CFT Act 2012 established the GFIU as a separate government body governed by a board of directors and staff. The government has allocated a separate budget to the GFIU to ensure its operational independence.
- The GFIU can provide mutual legal assistance to other FIUs and international organizations even without signing MOUs. Bilateral agreements are not required for such assistance (see Section 17 of the Act). The GFIU, in cooperation with CBG, has responded to a request for legal assistance from the Netherlands in connection with ML investigations. The application was for a sum of 500,000 US dollars (approximately 350,000 euros).⁷¹
- In dealing with financial vulnerabilities, the CBG has committed to the recommendations of the Financial Task Force (FATF) to develop a Straight-Through-Processing (STP) connection to a centralized, unfractured fully automated payment system in the banks.⁷²
- The AML/CFT Act 2012 provides different sanctions for all categories of reporters. All AML/CFT obligations now apply to DNFBPs, as specified in various provisions of the Act and in the guidelines issued to them.
- The Gambia has successfully introduced a payment system to reduce the use of cash in the economy. There is a working payment system. In addition, the GAMSWITCH projects will connect all automated teller machines (ATM). Other payment methods have started in earnest and are being expanded. Real Time Gross Settlement (RTGS) is available for the automated settlement of checks and other forms of payment in commercial banks.

⁶⁹ GIABA 8th Mutual Evaluation Follow-Up Report 2014, page 13. The FIU request for information from FIU Sao Tome and Principe (page 29) - the analysis of the case is ongoing. Available at: <https://www.giaba.org/reports/mutual-evaluation/Gambia.html>, accessed 11 May 2022.

⁷⁰ CBG Annual Report 2018, Joint onsite examination, pages 78, 79, and 94, available at: <https://www.cbg.gm/annual-reports>, accessed 11 May 2022.

⁷¹ The Point Newspaper, "2020 FIU Report: D16M Laundered, while Fraud Rampant in Gambia", available at: <https://thepoint.gm/africa/gambia/headlines/2020-fiu-report-d60m-laundered-while-fraud-rampant-in-gambia>, accessed 11 May 2022.

⁷² CBG Annual Report 2018, page 8 and 78, available at: <https://www.cbg.gm/annual-reports>, accessed 11 May 2022.

- The development of the Gambian financial infrastructure is based on the International Financial Reporting Standard (IFRS), which requires all banks to submit their respective roadmaps and impact assessments for the IFRS implementation. CBG has a monitoring regime that requires all banks to apply the IFRS format to their finances and to train employees based on these standards.

Deficiencies

- The law is ambiguous in designating agencies responsible for implementing and enforcing the AML law. Different units work separately to investigate money laundering, law enforcement and legal matters: the GPF Fraud Squad, and the GFIU. The GFIU is functional but needs to become more effective by taking on investigative and prosecutorial functions in addition to its current managerial powers.
- There are limitations on enforcing AML/CFT regulations. Particular reference is made to the GFIU's charter, which has only administrative powers dependent on decisions by the IGP in matters of further investigation and by the Attorney General and Minister of Justice for prosecution.
- Tax fraud was not specifically listed as a predicate offense by ML/TF, but tax evasion is a criminal behavior that the GFIU is tasked with combating. ML, TF charges, but also criminal acts within the meaning of § 2 of the law are criminal offenses punishable with a prison sentence of six months.
- The AML/CFT law should be revised to include tax crime and proliferation of weapons of mass destruction as predicate offenses of ML/TF.
- The Gambia has yet to domesticate most of the ratified conventions, including the UNCAC.

Chapter V

With specific reference to Chapter V of UNCAC, the following articles have been commented on and analyzed:

Art. 52 and 58 – Anti-Money Laundering

Legal Framework

Money Laundering and Terrorist Financing (ML/FT) is criminalized under the Anti-Terrorism Act 2002, the Drug Control Act 2003 (now known as the Drug Control Amendment Act 2005), Trafficking in Persons Act 2007 and the Financial Institutions Act 2003. Other related legislation includes the Criminal Code 1990. In addition, the revised Financial Institutions Act, the Central Bank Act and the Customer Due Diligence Regulations play an important role within the Gambia's AML/CFT strategy. The Gambia has also ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 and the United Nations Convention against Transnational Organized Crime 2000 - the Palermo Convention.

The ML/CFT Act 2002 was enacted on the basis of the Vienna Convention and the Palermo Convention. Money laundering offenses extend to natural and legal persons. Under the AML/CFT Act 2002, a person includes any individual or entity, corporation, partnership, trust or corporation, association, syndicate, joint venture, or other incorporated entity or group that may acquire rights or incur contractual obligations. Part (i) of The Gambia's ML/CFT Act 2002 provides that: "The Minister shall appoint a person or persons known as the Regulator to supervise financial institutions under the ML/CFT Act 2002." In The Gambia, dissuasive sanctions are provided for failure to comply with ML/CFT obligations in Section 5: "A financial institution, or any of its employees, directors, owners or other authorized representatives, who willfully fail to comply with any obligation under this section, or who willfully make a false report as referred to in of this Section commits an offense ML/CFT Act 2002 of the Gambia 2003."

Pursuant to Section 7 of the Gambia AML/CFT Act 2002, the Gambia's Anti-Money Laundering and Combating of Terrorist Financing Act 2012 empowers the GFIU to receive, analyze and report financial crime related information to the relevant authorities. In addition to adopting the administrative model of an FIU, the GFIU operates independently but works very closely with the relevant authorities. The scope of the AML/CFT system includes entities other than banks and financial institutions, particularly those susceptible to money laundering. The AML/CFT also provides provisions for CDD rules covering aspects other than entering into a business relationship.

The Gambia has adopted the threshold approach, limiting predicate offenses to offenses punishable by two years' imprisonment or more. The predicate offenses of money laundering are listed in Schedule 2 of the ML/CFT Act 2002 and do not cover the range of offense categories set out in the FATF. Ancillary offenses to money laundering such as conspiracy, attempt, aiding, abetting and advice on committing money laundering are punishable under Section 24 of the Gambia Criminal Code. These offenses also exist as substantive offenses in the Gambian Penal Code.⁷³

Good practices

- The Gambia AML/CFT Act provides for the identification and verification of accounts of beneficial ownership or related funds, including those held under the names of legal entities.⁷⁴
- Financial institutions in The Gambia, under the AML, require notified bodies to retain records of these transactions and relationships for a minimum of five years.
- The Gambia has made every effort to transpose its AML regime into national law, in line with FATF Recommendations, specifically recommendations 1, 10-13, 20-23, 26-29 and 35.⁷⁵
- The Gambia has taken all steps to mitigate the risks or vulnerabilities that have been encountered and identified in its jurisdiction in accordance with its laws within the AML framework.⁷⁶
- AML provides additional rules on how CDD-designated entities should report suspicious transactions or situations where they should not commence business, transact, or terminate business.⁷⁷ There is also a Safe Harbor provision to protect reporting entities and individuals from criminal and civil liability for breach of the confidentiality of reports made in good faith.⁷⁸
- The AML provides for an independent GFIU with different funding sources. The GFIU has evolved from being housed within the CBG with guarantees from the governor and senior management of the bank to operating independently on its own premises. The GFIU has a separate budget that is part of the implementation phase of a functioning FIU.⁷⁹
- The CBG has established the Security Settlement System (SSS) suitably designed for all government securities, interbank transactions, pension obligations, intraday liquidity transactions and other government obligations. It aims to implement an automated Delivery vs Payment (DVP) process for securities settlement and to improve and regulate liquidity management in

⁷³ Laws of The Gambia Criminal Code and The Gambia Penal Code are available in paper format. Accessed 12 May 2022.

⁷⁴ ML/CFT Act 2003, available at: https://www.imolin.org/doc/amlid/Gambia_ML_Act2003.pdf, accessed 12 May 2022.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

the securities markets. The SSS was designed to record and manage all government securities and interbank transactions.

- The software Barberousse-Capture allows scanning of payment instruments such as cheques, bills of exchange, etc. It must be installed in bank branches or head offices to support the following functions: scanning of both sides of the payment instrument; electronically sign images; reading Magnetic Ink Character Recognition (MICR) technology; print and endorse text on the back of the scanned instrument and load data related to scanned values.

Deficiencies

- In practice there is no provision in the regulations that prohibits FIs from engaging in correspondent banking with shell banks. Financial institutions themselves are not required to ensure that surveyed overseas financial institutions do not allow their accounts to be used by shell banks.
- There is no legal framework for Articles: 52.5, and 62.6 of the AML/CFT, which require government officials to disclose their assets domestically and internationally. However, such regulations are found in other laws of The Gambia Volume III.⁸⁰
- The supervisory money laundering and terrorist financing regime has not been implemented effectively. Some money or value transfer services (MVTs) and foreign exchange dealers that operate out of the major towns are not covered by the oversight regime.
- The CBG has not reviewed or conducted a risk assessment in any of the financial or informal sectors to determine the level of oversight that would be required in a low-risk sector. Regulatory resources are limited. Additionally, casinos are not subject to a comprehensive regulatory and oversight regime for AML/CFT purposes.
- Pawnbroker and gambling transactions and non-enforcement of regulations restricting the use of cash in the economy cannot be transparently tracked for AML/CFT purposes.
- The other DNFPBs are not subject to an effective monitoring system to ensure their compliance with FATF Recommendation 24 by the Gambian authorities.
- New staff have been recruited at the GFIU, but relevant stakeholder staff need further training. Essentially, the GFIU, as an administratively operated anti-money laundering agency, needs to improve its knowledge and information provision among stakeholders at the national level, providing sufficient information about the means and manner in which it carries out its duties and exercises its constitutionally prescribed powers.

Art. 53 and 56 – Measures for Direct Recovery of Property and Special Cooperation

⁸⁰ Laws of The Gambia, available in paper format only, accessed 12 May 2022.

Legal framework

The Gambia has yet to fully domesticate UNCAC Article 53: Measures for Direct Property Recovery and Article 56: Special Cooperation. The Gambia Lands Regions Act Chapter 57:03 provides provisions for the tenure and administration of lands in the regions and related matters.⁸¹ Various property rights regimes exist in The Gambia, including tenure over state lands and customary tenure. As a result, the Land Regions Act exposes the people at locations that are the subject of the extractive industry to the arbitrariness of the state. This has implications for their socio-economic rights.⁸²

According to the Criminal Code (CC), the criminal sanctions for corruption offenses include imprisonment, fine, assumption of costs, payment of damages and forfeiture. Forfeiture only applies to a limited number of corruption offenses such as bribing officials: Section 87, extortion by officials: Section 88, officials receiving property to show favor: Section 102, conspiracy to defeat justice, and tampering in witnesses: Section 103, Interest on Felons: Section 104, and the Courts, at their discretion, may substitute a fine for any imprisonment under Section 29.⁸³

The Property Rights Index, which is a sub-component of the Index of Economic Freedom,⁸⁴ measures the degree to which Gambian laws protect private property rights and the extent to which the government enforces those laws. Gambia scores 39 points, giving the impression that property rights are partially protected. It also gives an indication that expropriation would take place and analyzes the independence of the judiciary, the level of corruption and the ability of individuals and companies to enforce contracts.

Good practices

- The Gambia has enacted laws to punish acts of corruption and to pay damages. In The Gambia, common law corruption can result in the annulment or rescission of contracts. The Code of Criminal Procedure (CCP) gives the courts the power to order the convicted person to pay damages to persons who have suffered material or physical harm as a result of the crime

⁸¹ Ministry of Lands, Regional Government and Religious Affairs. The Ministry's website is not functional but it has a Facebook page that has no links to Land laws, available at: https://web.facebook.com/people/Ministry-of-Lands-Regional-Government-Religious-Affairs/100069419550463/?_rdc=1&_rdr. The Land Regions Act is available in paper format only from the Government Printer, accessed 16 May 2022.

⁸² Law Hub Gambia, "Placing free prior and informed consent at the center of extractive industry's regulatory reform in The Gambia", 12 May 2021, available at: www.lawhubgambia.com/lawhug-net, accessed 16 May 2022,

⁸³ The sections quoted in this paragraph are taken from The Gambia Penal Code, accessed 17 May 2022.

⁸⁴ Global Property Guide Property Rights Index in Gambia compared to Africa, available at: <https://www.globalpropertyguide.com/Africa/Gambia/property-rights-index>, accessed 16 May 2022.

committed. Section 145 of the Common Law on Tort also allows seeking redress for anyone harmed by corruption.

- In terms of special cooperation, The Gambia is a member of the International Criminal Police Organization (ICPO), its telegraphic address is INTERPOL. INTERPOL is hosted by the National Central Bureau (NCB), which connects national law enforcement agencies with other countries and the INTERPOL General Secretariat through a secure global police communications network called I-24/7.⁸⁵

Deficiencies

- Despite all the regulations and institutions, The Gambia has yet to actively pursue the recovery of assets acquired through fraud from former and current public officials, individuals and groups mentioned in the 2018 Janneh Commission report.⁸⁶
- At the national level, the Janneh Commission seized numerous properties believed to have been fraudulently obtained by the former President, his close associates and family members. However, the sale of these large assets is not transparent and has not been publicly disclosed since 2018.⁸⁷ Sales were halted following a Supreme Court ruling in 2020.⁸⁸
- There are no separate considerations in Gambian legislation regarding a particular category of claimant. Curiously, not even the Criminal Code or Criminal Procedures for The Gambia use the word special category of plaintiffs or in any of the anti-corruption agency regulations. Gambian law makes no distinction between persons bring an action in court. This was likely used to disqualify genuine claims in a personal action in court, thereby violating the right to a fair trial.
- The Gambia has yet to enact specific direct property recovery legislation to comply with Article 53 of the UNCAC.

Art. 54 – Confiscation Tools

Legal framework

⁸⁵ INTERPOL Regional Bureau, available at: <https://www.interpol.int/Who-we-are/Member-countries/Africa/GAMBIA>, accessed 16 May 2022. The NCBs' tasks are to collect the information needed by other NCBs to help investigate crimes or criminals in their own country and they share criminal data and intelligence to help another country. The NCBs are part of a global security network that collects national crime data for use by the global databases in accordance with their respective national laws and cooperate in cross-border investigations, operations and arrests. The agency is also used to fight corruption.

⁸⁶ Attorney General Chambers and Ministry of Justice, Janneh Commission Reports, available at: <https://www.moj.gm/downloads>, accessed 16 May 2022.

⁸⁷ The Standard Gambia Newspaper, Jammeh Properties, available at: <https://standard.gm/?s=Jammeh+properties>, accessed 16 May 2022.

⁸⁸ The Standard Gambia Newspaper, "Gov't suspends sales of Janneh Commission properties", available at: <https://standard.gm/gambia-news/govt-suspends-sale-of-janneh-commission-properties/>, accessed 16 May 2020.

Section 29(1) of the Laws of The Gambia provides that if a person is convicted of a money laundering offence, the court shall order that the property, proceeds or funds derived from or associated with the offense be forfeited and destroyed as the Minister may direct.

The AML/CFT Act 2012 contains a comprehensive and innovative set of provisions for detention, seizure and confiscation of assets relating to money laundering and terrorist financing, including procedures for tracing property, ensuring the effectiveness of confiscation orders and confiscation upon death or registration of restricted property and confiscation of equivalent value.

Good practices

- Sections 22 and 23 of the Gambia AML/CFT Act subject legal entities to criminal liability in cases of money laundering or terrorist financing. The new law succinctly laid out the various structures and committees needed to fully implement a robust AML/CFT framework.
- The GFIU has been given the power to implement the new Money Laundering Act in cooperation with the other government agencies. A number of investigators and prosecutors have undergone some training, but more technical support is needed in this area. With the passage of the new law, its implementation is a high priority for stakeholders.

Deficiencies

- There is no domestic legislation in The Gambia providing for the seizure of assets of foreign origin in the context of money laundering offenses or any other offense having equivalent effect. Legislation currently available in relation to seizures is limited in scope.
- There is no effective mechanism to allow the competent authority to comply with a confiscation order issued by a court of another State party to the Convention. Article 54(a) and (b) of UNCAC, which allows an order to confiscate property to be enforced by a court order of another State party to the Convention, has yet to be implemented.
- There are deficiencies in the coordination of freezing actions by different agencies involved and The Gambia is lagging behind in the full implementation and application of Article 54 of the UNCAC.
- There is no procedure to implement the obligations under STR. The responsible financial institution has received no guidance on how to identify and freeze terrorist funds. The police and CBG staff are not trained in the implementation of STR. There are no effective measures to ensure that requests from other countries are answered promptly.
- There is no effective mechanism to ensure efficient tracing and identification of ML and TF cases. The GFIU is unable to receive and analyze STR to assist law enforcement agencies (LEAs) in investigating AML/CFT cases. Law

enforcement officials, the GFU, CBG and prosecutors have not received training in the use of freezing and confiscation measures.

Art. 51, 54, 55, 56 and 59 – International Cooperation for the Purpose of Confiscation

Legal Framework

Section 32(2) of the Laws of The Gambia provides that the court or competent authority may receive a request from the court or other competent authority of another state to identify, trace, freeze the property, proceeds or funds, to confiscate or forfeit in connection with money laundering offenses and may take appropriate measures, including those referred to in Articles 28 and 29.⁸⁹

The processing of criminal proceeds to disguise their illegal origin in order to legitimize ill-gotten gains from crime is regulated by the ECOWAS Convention on Mutual Legal Assistance, to which The Gambia is a party. The Gambia has yet to incorporate the Convention into national legislation through an Act of the National Assembly.⁹⁰ During the GIABA Eight Follow-up Report Mutual Evaluation in May 2018, The Gambia applied to join the Egmont Group and the application is currently being reviewed.⁹¹ No decision has been made as of August 2022.

Good Practices

- The Gambia has a bilateral agreement with the Republic of Senegal to provide a level of international cooperation and asset recovery assistance.⁹²

Deficiencies

- The Gambia has not considered establishing an asset forfeiture fund for other countries or authorizing asset sharing with other countries.
- Instruments such as additional provisional measures for early and proactive asset protection are not sufficient. The Gambia is still considering the possibility of introducing additional interim measures to secure assets in corruption cases.
- Dual criminality is required when providing assistance under the AML Act. The provisions of the AML Act related to money laundering are too restrictive in granting ML requests. The threshold for the predicate offense of money laundering is too restrictive and not compliant with FATF standards. The

⁸⁹ These provisions are found in the Criminal Code and are widely used in the criminal justice system in The Gambia. The CC is available in paper format only, accessed 13 May 2022.

⁹⁰ National Assembly Business Bills Tracker, Mutual Legal Assistance in Criminal Matters 2019, available at: https://www.assembly.gm/?page_id=709, accessed 16 May 2022.

⁹¹ Ibid.

⁹² The Senegalo-Gambian Permanent Secretariat (PSSG) is a governmental agency established to increase cooperation between the two sister countries, available at: https://web.facebook.com/senegalogambia/?_rdc=1&_rdr, accessed 17 May 2020.

Gambian predicate offense threshold therefore inhibits international cooperation.

- National AML/CFT laws have yet to be tested. The Gambia has not made or sought extradition and therefore no obstacles to providing or obtaining MLA can be identified at this time.
- The transfer of criminal proceedings is governed by the ECOWAS Convention on Mutual Assistance on Criminal Matters 1992, to which Gambia is a party.⁹³ However, this Convention has yet to be incorporated into national legislation by an Act of the National Assembly.
- There is no evidence that non-conviction foreign confiscation orders are currently enforced domestically under appropriate legislation.
- There are undue restrictions on the process associated with granting AML/CFT requests under the AML Act. Privileges are only granted to countries that have signed bilateral or multilateral treaties with The Gambia under the AML Act.
- The GFIU requested information from Sao Tome and Principe FIU regarding a suspicious transfer of USD 500,000 (approximately 440,000 Euros) related to real estate investments. The GFIU has cooperated well with them and information gathering is ongoing, pursuant to UNCAC Articles 14, 52 and 58. However, during face-to-face meetings with GFIU officials who granted the interview, it became clear that investigations into this transfer are ongoing and further details of the funds remain unknown.
- The Gambia has not yet informed the United Nations Secretary-General whether the UNCAC constitutes a legal basis for cooperation on extradition and was reminded of its obligation to inform the UN Secretary-General whether The Gambia uses the Convention as a legal basis for cooperation on extradition.

Art. 57 – The Return and Disposal of Confiscated Property

Legal framework

Authorities seeking to recover stolen assets may attempt to assist a criminal or non-conviction-based seizure initiated in another jurisdiction against corrupt foreign officials, their employees, or identified assets. After the process is completed, the state or government may be able to obtain a portion of the recovered assets through orders from foreign courts under national and international laws or international treaties. This route requires that the foreign authority (a) have jurisdiction, (b) have the

⁹³ Economic Community of West Africa States; Ecowas Convention on Mutual Assistance in Criminal Matters 1992, download available at: https://www.google.com/search?q=ECOWAS+Convention+on+Mutual+Assistance+in+Criminal+Matters+of+29+July+1992&sxsrf=ALiCzsb6Yego3JwiHSdbbkbmwyxYo43w8Q%3A1659622316758&ei=rNPrYrL1LZGtgXS2LC4BA&ved=0ahUKEwiY-5r1rq35AhWRlqQKHVIsDEcQ4dUDCA4&uact=5&og=ECOWAS+Convention+on+Mutual+Assistance+in+Criminal+Matters+of+29+July+1992&gs_lcp=Cgdnnd3Mtd2l6EANKBAhBGABKBAhGGABQAFqAYJlhaABwAHgAgAEAiAEAkqEAmAEAoAECoAEBwAEB&sclient=gws-wiz, accessed 29 July 2022.

ability to prosecute and seize, and (c) most importantly, be willing to share the proceeds. The Gambian National Assembly is currently considering the adoption of a legal framework covering issues of disposition and confiscation of property.⁹⁴

A lawsuit can be instituted in a foreign jurisdiction in one of two ways:

- a. Authorities in the jurisdiction affected by corruption may request the foreign authorities to open their own case. This can be done by filing a complaint or, even more simply, by exchanging information spontaneously, e.g., by forwarding incriminating evidence or the file to the authorities of the foreign jurisdiction. In such situations, it is ultimately at the discretion of the foreign or international authorities to pursue or ignore the case. If they decide to pursue it further, the jurisdiction affected by corruption must continue to cooperate with foreign and international authorities in sharing evidence and information.
- b. Foreign or international authorities can open a procedure independently of a request from the jurisdiction affected by corruption. Foreign authorities may receive information linking a corrupt public official or corrupt international public official to their jurisdiction, whether through a newspaper article, information from the international public body, an STR, or a request for informal legal assistance or formal mutual legal assistance and decide to investigate money laundering or bribery of foreign officials committed on their territory.

Deficiencies

- The Gambia is unable to pursue effective disposition of confiscated property, although it has established The Assets Recovery and Management Corporation (AMRC), an asset recovery body with very limited powers.⁹⁵
- The Gambia is unable to investigate proceeds of crime outside its jurisdiction. The Gambia is constrained by several factors, including the challenges of tracking assets abroad.
- There are currently no provisions in domestic legislation providing for the disposal and return of confiscated foreign-origin assets, even in cases of autonomous confiscation (for example, confiscation ordered by your own jurisdiction without the involvement of the foreign state concerned).
- The Jannet Commission concluded that thirty-eight elected and unelected officials, including the former President and private sector actors, worked together to extort public funds during the twenty-two years of former President Yahaya Jammeh's authoritarian regime.⁹⁶ Some confiscated assets were disposed of, but part of the proceeds from sale were given to victims of the regime's human rights abuses. The rest is yet to be settled by the

⁹⁴ Gambia National Assembly Bill Tracker; available at: https://www.assembly.gm/?page_id=709, accessed 1 August 2022.

⁹⁵ MoFEA, Public Private Partnership State Owned Enterprise, available at: <https://mofea.gm/soe>, accessed 17 May 2022.

⁹⁶ Attorney General Chambers and Ministry of Justice, Jannet Commission Reports White Paper 2019, page 43 and 47, available at: <https://mofea.gm/soe>, accessed 17 May 2022.

current administration, which has halted investigations and divestments of the former president's property. The Janneh Commission includes the prosecution of five European companies mentioned in the bribery of foreign public officials committed under Gambian jurisdiction.⁹⁷

Statistics

Money Laundering

Reporting/Intelligence Phase	Year: 2015	Year: 2021
Number of Suspicious Transaction Reports (STRs) filed by each category of obliged entities: - Banks and financial institutions - Non-financial businesses and professions (NFBPs)	1	1
Number of postponement orders adopted on reported transactions	0	0
Number of money laundering investigations carried out independently by law enforcement agencies (without a prior STR)	1	1
Number of suspicious cash activities at the border reported to the FIU (including those based on declarations and smuggling)	0	0
Number of STRs sent to law enforcement and on which further analysis was made	1	1
Number of staff dedicated full-time (or full-time equivalent) to money laundering in the FIU	7 Board Members and Director of GFUI as secretary ⁹⁸	34

Investigation Phase	Year: 2015	Year: 2021
Number of cases initiated by law enforcement agencies on the basis of STRs sent by the FIU	Under investigation	The investigations are ongoing

⁹⁷ Attorney General Chambers and Ministry of Justice, Janneh Commission Reports White Paper 2019, page 43 and 47, available at: <https://mofea.gm/soe>, accessed 17 May 2022.

⁹⁸ The Point Newspaper, "Fight against money laundering, others intensifies as new FIU Board is inaugurated 2013", available at: <https://thepoint.gm/africa/gambia/article/fight-against-money-laundering-others-intensifies-as-new-fiu-board-inaugurated>, accessed 17 May 2022.

Number of staff dedicated full-time (or full-time equivalent) to money laundering in law enforcement agencies	2	2
Number of cases brought to prosecution: originating from STRs, CTRs and independent law enforcement investigations	Pending	Pending

Short analysis

The Gambia has a catalog of corruption cases that is only accessible to the Gambian Police Force (GPF), the Attorney General Chambers and the Ministry of Justice. CSOs cannot obtain information about law enforcement in The Gambia, despite an Access to Information Act approved by the National Assembly and assented to by the President in 2021. A large proportion of corruption cases are not prosecuted because the DPP office is not independent and has been vacant for five years. GPF mentioned an undisclosed alleged money laundering case in 2021 in an interview for this report, but the identity of the perpetrators was not shared. During a face-to-face meeting with the security officials, it was revealed that the case file was being followed by MoJ officials.

Information on asset recovery cases

The Janneh Commission, in addition to the recommendations in Volume 3, pages 287-288,⁹⁹ made provisions to forward third party claims to another forum for resolution. Below are the key recommendations of the Janneh Commission that still need to be fully implemented:

The Commission's terms of reference were to investigate the circumstances surrounding the withdrawal of various funds from the Central Bank of The Gambia, including the International Gateway Account, the local Carnegie Mining Project Account and other accounts on file with the Central Bank, and: whether bank policies have been followed in opening and maintaining accounts and disbursing funds; determine whether funds withdrawn have been properly used for budgeted and lawful purposes; and to name institutions, people and groups of people who are directly involved in the payment, disbursement and use of these amounts. The Commission ruled against several groups, which included the following:

The Former President of The Gambia

Former President Jammeh was the main subject of the Commission's investigation. The commission found that former President Jammeh's legitimate earnings were insufficient to purchase properties valued at 195,500,000 Gambian Dalasi (approximately 3.5 million USD). The Commission also found overwhelming evidence

⁹⁹ Attorney General Chambers and Ministry of Justice, Janneh Commission Reports, Vol. 3, Special landed Properties, available at: <https://www.moj.gm/downloads>, accessed 17 May 2022.

that the source of funds for the acquisition of the properties, whether on behalf of Kanilia Family Farms Limited (KFF), the Kanilia Group of Industries (KGI) or former President Jammeh himself, was acquired through illegal activities and most likely, from public funds. According to the Commission, all real estate acquired through purchase reverts to former President Jammeh, KFF and KGI as constructive trustees of the state in the amount of funds illegally taken from the state. In addition, the Commission found that stamp duty on the purchases was not paid by former President Jammeh or KFF as buyers in most cases.

M.A. Kharafi & Sons Ltd.

The Commission found that former President Jammeh forced the transfer of stolen property to his company, Millennium, and then pretended to sell the shares to a certain individual. M.A Kharafi & Sons Ltd. purchased the Kairaba Beach Hotel from Millennium in June 2004. The selling price was \$10 million less \$2,632,573.82 for settlement of the vendor's debt to Standard Chartered Bank. The net purchase price received by former President Jammeh was \$7.3 million USD. The Commission found that a deed of assignment was not executed in a manner consistent with the sale of registered property. Instead, a new lease was applied for and issued first to Mohamed Abdul Mohsen Al-Kharafi & Sons, and then through a corrected version to M.A Kharafi & Sons Gambia Ltd.

Managing Partners of MGI Telecom AG, a Swiss-registered foreign company accused of corruption and fraud

MGI Telecom AG (MGI) is a company incorporated under the laws of Switzerland with its registered office in Zurich. MGI was the exclusive international gateway manager from May 2014 until 2017, when their contract was terminated. MGI had no presence in The Gambia, and the day-to-day monitoring and technical management of the gateway was carried out by Mobicel Blue Ocean Wireless Ltd., a company owned by a Gambian national and his wife. The two managing partners of MGI Telecom AG, along with two Gambian nationals were declared close associates of former President Jammeh on April 16, 2018.

The Commission found that the two managing partners sought the Gateway management contract from former President Jammeh. Two meetings were held in Kanilai to advocate for the treaty. The first meeting took place during Njogu Bah's tenure as head of civil service. This meeting did not result in the award of the contract. Former President Jammeh asked for a \$10 million incentive, which was routed through a Gambian national, to terminate the deal with Tell Inc., Gateway manager at the time, in favor of MGI, which agreed to offer \$2 million. Former President Jammeh, however, wanted more. A follow-up meeting was scheduled in Kanilai in 2014. The meeting was attended by several prominent Gambian nationals. At this meeting it was agreed that MGI would be the new gateway manager.

Romanian nationals on charges of foreign bribery and fraud

Two Romanian businessmen with family ties were appointed by Former President Jammeh as ambassador at large and Gambian ambassador to the United Arab Emirates. Both were declared close associates of former President Jammeh on 16 April 2018.

The Commission found that through the influence of former President Jammeh's executive branch, two hotels in Cape Point owned by the Social Security and Housing Finance Corporation (SSHFC), namely: The Ocean Bay Hotel and the Sun Beach Hotel were each leased to BP Investment Group FZE (BPI). The terms of both leases were heavily influenced by former President Jammeh, were not competitive and due process was not followed. In any case, the negotiating teams on behalf of SSHFC felt compelled to accept the terms offered by BPI, given the perceived influence of former President Jammeh. BPI borrowed \$5 million for the Ocean Bay Hotel and \$2 million for the Sun Beach Hotel from Westwood through a July 2014 loan agreement. These funds were never paid out. Westwood Gambia Limited controlled the illegal rosewood business across the country during the former President's regime. The two Romanian businessmen are currently banned from entering the territory of The Gambia.

A prominent Gambian businessman

A prominent Gambian businessman and lawyer was identified by the Commission on October 13, 2017 as a close associate of former President Jammeh. The Commission also found that his companies had a 'most favored person' status, with many contracts having skipped procurement rules. In addition, Euro Africa Group Limited (EAGL), a company owned by this individual and other close associates of former President Jammeh, was offered the exclusive right to import all of the country's petroleum needs from 2004 to 2017, and to build a fuel depot and supply Heavy Fuel Oil (HFO) to the National Water and Electricity Corporation (NAWEC).

Name, parties involved and subject matter of proceeding	Type (criminal, civil, administrative) and origin of proceedings	Current status of the proceedings	Problems encountered
Former President, Public Bodies, Enterprises and Offices	Civil, originating from the Janneh Commission Report Volumes 1-3	Suspended.	Bodies such as the inter-ministerial task force were inaccessible due to excessive bureaucracy and dysfunction.
	Civil, originating from the Janneh Commission Report Volume 3	Pending investigation; properties in the USA and Morocco could not be traced. ¹⁰⁰	No known efforts to track these assets.
	Civil, originating from the Janneh Commission Report contained in pages 61-63	These properties were not part of the Commission's mandate. ¹⁰¹	Further investigations required.
M.A. Kharafi vs Attorney General	Civil case	Supreme Court overturns Court of Appeal's ruling. ¹⁰²	
Managing Partners of MGI Telecom AG, a Swiss-registered foreign	Civil case	The case is ongoing, but currently appears to be static.	The Global System for Mobile (GSM) Communication's operator sued MGI

¹⁰⁰ The Standard Gambia newspaper, "Jammeh forfeits Potomac Mansion to US Gov't", available at: <https://standard.gm/gambia-news/jammeh-forfeits-potomac-mansion-to-us-govt/>, accessed 17 May 2022.

¹⁰¹ The Standard Gambia newspaper, "More Jammeh properties identified", available at: <https://standard.gm/gambia-news/jammeh-properties-identified/>, accessed 17 May 2022.

¹⁰² Gambia.com, "Supreme Court overturns Court of Appeal ruling on K A. Kharafi", available at: <https://www.gambia.com/supreme-court-overturns-court-of-appeals-ruling-on-ma-kharafi/>, accessed 17 May 2022.

company, accused of corruption and fraud			Telecom in Gambian courts for damages due to misconduct. ¹⁰³
Romanian nationals on charges of foreign bribery and fraud	Administrative, Janneh Commission	Inactive	During talks with officials from the Ministry of Justice and the National Assembly via interviews conducted for this report, it was revealed that the country does not have the capacity to prosecute cases of asset seizures from abroad.
Gambian businessman's appeal against Janneh Commission findings ¹⁰⁴	Civil case	Dismissed	
Janneh Commission indicts dozens	Criminal	Cases not yet in court	The Gambia Court of Appeal ruled that the Janneh Commission recommendations could not be practically enforced by the judiciary, which only issues advisory orders. ¹⁰⁵

¹⁰³ The Standard Gambia newspaper, "Africell sues MGI Telecom for \$1M", 10 March 2022, available at: <https://standard.gm/gambia-news/africell-sues-mgi-telecoms-for-1m/>, accessed 17 May 2022.

¹⁰⁴ The Standard Gambia newspaper, "Amadu Samba's appeal against Janneh Commission findings starts", 7 November 2019, available at: <https://standard.gm/gambia-news/amadou-sambas-appeal-against-janneh-commission-findings-starts/>, accessed 17 May 2022.

¹⁰⁵ The Standard Gambia newspaper, "Janneh Commission Gov't White Paper orders cannot be enforced", 4 June 2020, available at: <https://standard.gm/gambia-news/janneh-commission-govt-white-paper-orders-cannot-be-enforced/>, accessed 17 May 2022.

V. Recent Developments

Below is a list of recent developments in The Gambia:

- The Gambia has established the Office of a Minister charged with responsibility for overseeing the functional activities of the public service, in accordance with the Civil Service Act and the recommendations put forth in this report.
- The Gambia has drafted a new bill to replace the current electoral laws. The draft electoral law includes provisions to enforce a declaration of the sources of political funding. As of July 2022, the draft electoral law is at the stage of hearing, and would comply with UNCAC Articles 5 and 7.3.
- The civil service is now diligently reforming through new policies, regulations and codes of conduct to correct mistakes, abuses and backlash within its ranks. Civil service reform has been underway for twenty-one years and has achieved notable results, such as the drafting of new code of conduct and new civil service pension scheme.
- The Gambia Anti-Corruption Bill 2019 is at the committee stage, in its second reading.¹⁰⁶ Once finalized, the bill will comply with Article 6 of the UNCAC. Since 2019, the parliamentary sessions to consider the draft law have been interrupted several times for no tangible reason.
- The National Assembly ended its legislature in March 2022 and the general elections concluded in April 2022. A new group of parliamentarians has been sworn in and parliamentary activities are ongoing.
- The Office of the Ombudsman is currently reforming its way of working by reviewing duties, roles and powers to reach the whole country, which relates to Article 6 of the UNCAC.
- A new law on Access to Information was approved by the National Assembly and endorsed by the President on August 25, 2021, in compliance with UNCAC Articles 10 and 13.1.
- The Gambia is to draft a new National Development Plan to replace the 2018 plan, which ended in 2021. Opportunities exist for full inclusion of anti-corruption mechanisms previously omitted in 2018 in the new NDP, pertaining to UNCAC Article 5.
- A law on mutual legal assistance that should have been read in September 2021 was postponed to February 2022, and again suspended until the next legislative year. When it comes into force, it seeks to comply with Article 44 of the UNCAC.

¹⁰⁶ National Assembly Business Bill Tracker, available at: https://www.assembly.gm/?page_id=709, accessed 17 May 2022.

VI. Recommendations

The Gambian government should strive to curb corruption internally to avoid unsustainable public governance. Government corruption feeds on the livelihoods of civilians and causes an overall deterioration in governance. The Gambia should continue to ensure the integration of anti-corruption programs into the public service and encourage the private sector to replicate such practices. To do this, we recommend the following:

1. Identify and analyze factors undermining the drivers and dynamics in anti-corruption implementation and application, with a focus on the role of broader objectives and processes that encompass the national fight to combat corruption.
2. Implement important anti-corruption measures by ensuring that an anti-corruption commission is in place and anti-corruption policies are applied in practice.
3. Strive to put in place internal controls to detect and prevent fraud in the public sector and state-owned enterprises (SOEs).
4. Ensure systematic corruption risk assessments in public services and government enterprises, regularly implementing corruption risk mitigation strategies and improving public service performance.
5. The Ombudsman's mandate should be extended to include the power to instruct public officials on issues of maladministration in the functional activity of the public service. The mandate should also include the review of the implementation and application of standards in the public sector and public service at large. The Ombudsman should produce a single annual report for all stakeholders.
6. The Head of Civil Service should facilitate cooperation and coordination between public services and the various ministries and government agencies under his supervision.
7. The Head of Civil Service should publish an annual directory listing all officers and their positions, official email addresses, phone numbers including an official cell phone number, and social media contacts. A list of official transfers of civil servants should also be published regularly in a government gazette.
8. Introduce a policy allowing all civil servants to own officially issued mobile phones for use during official working hours. Such mobile phones, which would remain state property, are an essential part of e-governance reform and building strong institutions in The Gambia.
9. Publish the progress of budget execution, as has been done previously, and provide a clear timetable for publication, including the examination and inspection of every system of financial management, books and accounts in every budgetary authority. If that is not possible, responsible bodies should submit government financial statements to the Auditor General and release them for public interest, as required by law.

10. The public sector should be clearly defined and identified for reporting, transparency and accountability purposes. Government financial relationships with the private sector should be disclosed, with transactions conducted openly, following clear rules and procedures.
11. Regularly evaluate the activities of the application of the civil service policy and measure the integrity of the civil servants in accordance with the Gambian Constitution and the Civil Service Act (1991). Formally, the government should also make changes if necessary.
12. The words 'secrecy' and 'transmission' in the General Orders (GO) for the Public Service of The Gambia and the Gambian Constitution Section 223, should be redefined or deleted to reflect the provisions of UNCAC Articles 9, 10 and 24.
13. Presidential appointments of CEOs of SOEs should be subject to review by the National Assembly to prevent any form of conflict of interest in the selection process.
14. Permanent secretaries of line ministries who sit on the boards of state-owned companies contradict the UNCAC's guiding principles, and this practice needs to be revised.
15. Re-establish and reconstitute the Civil Service Training Committee to regulate its own procedures within the civil service and to promote the application of common Gambian civil service standards in all areas of governance; with the exception of national security forces who are subjected to special procedures and the GO.
16. Expand the role and functions of the Office of the Director of Public Prosecution in the administration of justice in The Gambia and grant it administrative and financial independence.
17. Adopt a legal framework for UNCAC Articles 52.5 and 52.6, which relate to disclosure of assets by government officials at home and abroad.
18. Pass legislation to regulate foreign exchange trading. Effective implementation has not taken place within the framework of the supervisory system for money laundering and terrorist financing. As a result, some Money or Value Transfer Services (MVTs) and forex dealers operating out of town do not fall under the oversight regime.
19. Solve analytical software problems to facilitate online electronic reporting and set up an appropriate feedback mechanism to provide timely feedback to reporting entities.
20. The Central Bank of The Gambia (CBG) should seek to conduct regular risk assessments for the financial and non-financial (or informal) sectors to determine the level of oversight that would be required in a low-risk sector. More resources should be made available to supervisors.
21. Casinos are not subject to a comprehensive regulatory and oversight regime for AML/CFT purposes. The CBG should take action to control casinos, real estate companies, credit unions, building societies, securities dealers and brokers, and trust businesses. Another sector that needs to be monitored is

pawnshops, which currently don't receive enough attention in relation to AML/CFT.

22. Take action to provide guidance to Designated Non-Financial Businesses and Professions (DNFPBs) on how to create Suspicious Transaction Reports (STRs). As the STR system is not yet implemented in The Gambia and the Gambia Financial Intelligence Unit (GFIU) is not operational, no feedback or specific training has been provided to DNFPBs to enable them to identify suspicious transactions.
23. Ensure the implementation of FATF Recommendation 25 on Transparency and Beneficial Ownership of Legal Arrangements. The Gambia should also take steps to prevent abuse of money laundering or terrorist financing laws, and should also be able to initiate countermeasures independently, effectively and appropriately according to the risks.
24. Adopt new comprehensive legislation on mutual legal assistance in criminal matters in full compliance with the requirements of Article 46 of the UNCAC.
25. Conclude bilateral or multilateral agreements to improve international cooperation in relation to extradition, mutual legal assistance, transfer of sentenced persons or criminal proceedings, law enforcement cooperation, joint investigations and special investigative techniques in accordance with Articles 44-50 of the UNCAC.
26. Beneficial ownership rules should apply to all legal vehicles in all sectors. All legal entities that are separate from an individual and are allowed to engage in a country's economy by owning assets such as real estate or by offering or purchasing goods or services should be required to register their beneficial owners. These include corporations, limited liability companies, trusts and private foundations. In addition, any foreign legal entity with a resident participant should be required to register domestically, such as foreign law trusts with a resident trustee.

VII. Annex

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